

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1101

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

-against-

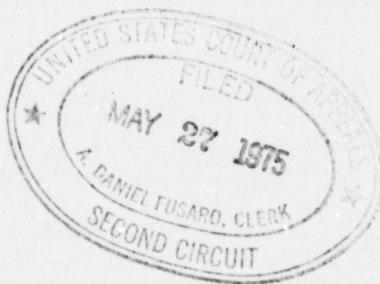
LAM MUK CHIU

Defendant-Appellant

Docket #75-1101

Special Calendar
#S 247

BRIEF AND APPENDIX FOR
DEFENDANT-APPELLANT



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PRELIMINARY STATEMENT

The decision herein appealed from was rendered by Judge Thomas C. Platt of the Eastern District Court of New York. His opinion is unreported.

THE ISSUES

The issues presented by this appeal are:

1. WHETHER THE TRIAL JUDGE ERRED IN NOT ALLOWING DEFENDANT TO OFFER EVIDENCE THAT THE LETTERS RECEIVED BY THE CONFIDENTIAL INFORMANT WERE NOT WRITTEN BY HIM. THIS EVIDENCE WOULD HAVE CONSISTED OF EXPERT TESTIMONY COMPARING THE HANDWRITING ON THE LETTERS TO THE HANDWRITING EXEMPLARS WHICH WERE PREPARED BY THE DEFENDANT AFTER HIS ARREST.
2. WHETHER THE TRIAL JUDGE ERRED IN ADMITTING INTO EVIDENCE THE ITEMS SEIZED FROM THE DEFENDANT WHEN THE SAID DEFENDANT WAS ARRESTED WITHOUT FIRST OBTAINING A SEARCH WARRANT.
3. WHETHER THE JUDGMENT AGAINST THE DEFENDANT SHOULD BE REVERSED DUE TO THE FACT THAT UPON ALL THE EVIDENCE ADDUCED AT THE TRIAL, PLAINTIFF FAILED TO SUSTAIN HIS BURDEN OF PROOF AND A DECISION SHOULD HAVE BEEN DIRECTED FOR THE DEFENDANT.

STATEMENT

Defendant-Appellant was indicted by a Grand Jury in the Eastern District of New York in Criminal No. 74CR524, Criminal Folder No. 743,029 on August 15th, 1974. The Indictment contained eight counts.

COUNT I Charged:

On or about and between the 4th day of February 1974 and the 10th day of August 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together, and with each other to violate Sections 841 (a) (1), 952 (a), 960 (a) (1) of Title 21, United States Code and Section 2 of Title 18, United States Code.

1. It was part of said conspiracy that the defendants knowingly and intentionally would import and bring into the United States large quantities of heroin, a Schedule I narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants knowingly and intentionally would distribute quantities of heroin, a Schedule I narcotic drug controlled substance.

3. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed within the Eastern District of New York and elsewhere:

O V E R T A C T S

1. On or about February 4, 1974, defendants CHIN KIN MAN, LAM MUK CHIU AND WONG HAN KAN met in New York, New York.

2. On or about February 16, 1974, defendant LAM MUK CHIU traveled to San Francisco. California from Queens, New York.

3. On or about June 3, 1974, defendant LAM MUK CHIU sent a package containing heroin to the Eastern District of New York from Hong Kong. (Title 21, United States Code, Section 846).

COUNT II

On or about the 12th day of March 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately two (2) ounces of heroin, a Schedule I narcotics drug controlled substance. (Title 21, United States Code, Sections 952 (a), 960 (a)(1) and Title 18, United States Code, Section 2).

COUNT III

On or about the 3rd day of April 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately five (5) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a), 960(a)(1) and Title 18, United States Code, Section 2).

COUNT IV

On or about the 22nd day of April 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU AND WONG HAN KAN,

knowingly and intentionally did import into the United States from Hong Kong, approximately ten (10) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, sections 952(a)(1) and Title 18, United States Code, Section 2).

COUNT V

On or about the 24th day of April 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately fifteen (15) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a), 960(a)(1) and Title 18, United States Code, Section 2).

COUNT VI

On or about the 22nd day of May 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately one eighth (1/8) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a), 960(a)(1) and Title 18, United States Code, Section 2).

COUNT VII

On or about the 3rd day of June 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately thirty (30) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a), 960(a)(1) and Title 18, United States Code, Section 2).

COUNT VIII

On or about the 3rd day of June 1974, within the Eastern District of New York, the defendants CHIN KIN MAN, LAM MUK CHIU and WONG HAN KAN, knowingly and intentionally did import into the United States from Hong Kong, approximately twenty five (25) ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a). 960(a)(1) and Title 18, United States Code, Section 2).

Trial was had, and a finding of guilty was returned on Counts I-V, and Counts VII-VIII. Count VI was dismissed. Judgment and Commitment was entered on March 18, 1975, providing for imprisonment for a period of twelve years. Notice of Appeal to this Court was timely filed.

DISCUSSION OF THE EVIDENCE

The Plaintiff's case against the defendant was in its main thrust based upon and constructed around the testimony of Wai Wok Yip, hereinafter referred to as Harry Yip as was done so at the trial.

Harry Yip was a paid Government informer and became a paid Government informer after he was convicted of the possession of three pounds of heroin. Mr. Yip had already been sentenced to five years imprisonment for the possession of the three pounds of heroin, however, the imposition of that sentence has been stayed pending his testimony at the trial in the case at bar. Mr. Yip fully expected that his sentence will be reduced or eliminated by his testimony at this trial (RT p.15-17). He stated that Agent Jason told him that if he cooperated with the Government it could be beneficial to him, (RT p.301) and that it would allow him to see his wife and child. (RT 302-303). Agent Jason also said to Harry Yip that the only way to help yourself was by producing arrest information, leading to the arrest and conviction of a large volume narcotic transaction. (RT. p.306).

Mr. Yip on direct testimony, testified that defendant and others did conspire in New York to import and distribute large quantities of heroin, as alleged in Count I of the Indictment. The remaining Counts of the Indictment all refer to a period of time when the defendant was in Hong Kong. The evidence presented was largely that of letters and phone calls allegedly made by the defendant to Harry Yip to consummate the actual importation of the heroin.

Cross-examination of the witnesses who testified at the trial demonstrate quite clearly that: (A) Harry Yip's testimony as to the involvement of the

defendant in the alleged conspiracy in replete with lies and falsehoods and that in fact there is no direct testimony which shows that defendant was involved in the conspiracy as charged; (B) that though the Government had an opportunity to obtain positive voice identification of the defendant right before his arrest at JFK Airport, they willfully neglected to do so and thus they could not demonstrate that it was in fact defendants who had made the telephone calls to Harry Yip in furtherance of the alleged conspiracy, (C) that the Government provided no expert witness to testify that the letters allegedly written by the defendant and used in evidence against him were in fact written by him. Also the Governemnt objected to submission of handwriting specimens taken from the defendant after his arrest to be submitted by defense council to show that the handwriting of the defendant and the handwriting in the letters were in fact not written by the same hand. Trial Judge upheld this objection. (D) That the Government used in evidence physical items which were obtained through an illegal search and seizure.

(A)An analysis of Harry Yip's testimony on cross-examination brings out the many falsehoods of this testimony and shows that defendant was not a part of the alleged conspiracy. (RT 330-406; 410-412).

Mr. Yip's involvement in the present crime began on February 4th, as alleged in the indictment.

Mr. Yip told us that he was directed by the agent to make contact with Chin Kin Man, and he did make contact with Chin Kin Man, there is no question about that, and as a result of the contact he made with Chin Kin Man, he met David Wong.

At this point Mr. Yip's testimony becomes fuzzy.

On direct examination he stated without any hesitation that he was sitting in a car and saw David Wong walk by, and the next thing that he told us was that David Wong greeted him.

However, his statement which he admits is true stated that he greeted David Wong. A mere forgetfulness.

A second small falsehood that he has told, and in which he retracted his direct examination, he admitted, yes, it is not true, he conceded that he had given you false testimony, and the next thing that happened, according to Mr. Yip, was that he went to Chin Kin Man's apartment and he saw white heroin, a white powder heroin.

On cross-examination, he again retracted this statement and said that Mr. Wong showed him white powder heroin.

Perhaps this is not a very important mistake but yet again, it shows the character of this witness, he again admitted to you that he had, indeed, lied.

Harry Yip continued and told us about events that occurred on February 5th.

In Mr. Yip's direct examination before you, ladies and gentlemen, he stated that Chin Kin Man told him that David Wong would like to go back to Hong Kong because he didn't have any money here.

On cross-examination he again admitted that he made a mistake, he admitted that the testimony he gave you was incorrect.

After he read his statement he said, Yes, it was true that Wong said it and then that Chin Kin Man didn't state it.

His testimony is replete with falsehoods and lies.

When pressed on this point, Mr. Yip finally made a statement to you in which he admitted that whatever testimony he may have given you and was inconsistent with his prior statement, which is defendant's exhibit B in evidence, his testimony, in fact, was false, his sworn testimony was false.

He said whatever the statement said is correct.

February 5th is a very important date with regard to the crimes which are alleged to have been committed by the defendant Lam Muk Chiu.

On February 5, 1974, there was a discussion held in the apartment at 11th Street and First Avenue, pertaining to the establishment of a partnership which purpose was to import into the United States large quantities of heroin.

This date is very important, the testimony involved on that date is very important, not only Harry Yip's testimony of Agents Jason and Fenrich.

On Mr. Yip's direct testimony he told you that, without any hesitation whatsoever, that Mr. Lam Muk Chiu was amongst those in the partnership,

was amongst those to be in the partnership, but on cross-examination and in accordance with Mr. Yip's signed statement, Mr. Yip admitted that his direct testimony was wrong and that his statement of February 8th was correct.

The statement of February 8th, was very important. That statement said in no uncertain terms, yes, the partnership was to be established, its purpose was to import large quantities of heroin, and that the members of that partnership and conspiracy were to be David Wong, Chin Kin Man and Harry Yip. There has been no mention whatsoever of Defendant Lam Muk Chiu.

Let us deviate for a moment to the evidence of Agent Jason and Agent Fenridge: They told us what the job of the informer was, what he was being paid to do, and they told you whatever important information that Harry Yip gave them would certainly appear in their reports because their reports contain only important information, and they told you that if they knew the members of the supposed conspiracy, those names would certainly appear in their report. The name of Lam Muk Chiu did not appear in any report, so that the direct testimony of Harry Yip must be disbelieved in this respect.

Additional information was given to us by Harry Yip about what else happened on February 5th. Harry Yip advised us, and it is also very important for you to have in mind, that David Wong stated to him that he frequently mailed and/or shipped heroin to the United States from Hong Kong, and that Wong expressed the desire to develop a New York connection with whom he could regularly mail and ship heroin -- not involve the defendant Lam Muk Chiu.

Harry Yip Again' told us a very interesting thing when questioned about the events of February 7th and February 8th, he asked, Did you know that the third person in the room was Lam Muk Chiu, had you been introduced to him?

And he said without any hesitation, Yes, I knew it to be Lam Muk Chiu at that time.

Now you have heard the testimony of agent Jason in which he told you that the name of any person connected with David Wong would be very important and that he would have been certain to include any name given to him by the informant in his reports. Agent Jason, as you remember, made no mention of the name Lam Muk Chiu in his report through and including the report dated February 19, 1974. Agent Fenridge told you the same thing. There is no question that Harry Yip's testimony again is incorrect. He did not know Lam Muk Chiu, he saw Lam Muk sitting around as an unknown person not involved in any crime.

There are many more falsehoods in having Yip's testimony. These involve the statements which were made by other persons such as whether Chin Kin Man said that David Wong was leaving the United States because he needed money as compared to what was said in his statement and that in fact David Wong made that statement.

I remind you that it was only on the cross-examination of Harry Yip that he admitted that his testimony was replete with lies, and in fact he even admitted to you that he had lied before the Grand Jury.

On the very next day' February 6th; Harry Yip had conversations with David Wong and these conversations referred to the obtaining of a sample of heroin by Mr Yip stated that there was conversation with other people, people other than Mr. Wong, with relation to the obtaining of the sample.

On cross-examination. when confronted once again with a state-

ment which did not reflect conversations with any other people, Mr. Yip said that, it would be fair to say that there were no conversations with people other than Mr. Wong, again admitting his falsehoods.

On February 7th, Harry Yip made his first purchase of heroin from the named defendants in the indictment, whom did he purchase it from, David Wong.

On that day, Harry Yip said, well, I gave the money to ~~Mr. Lam Muk Chiu~~ Chiu, he counted it and gave it back to me. And yet then again, when confronted on cross-examination, Harry Yip admitted that he had testified improperly and incorrectly. His statement which he admits was correct said that he gave the money to Mr. Wong who counted it, and Mr. Wong merely gave the money later on in that day to certain people. Mr. Yip wasn't even sure about how much money, but he was quite certain that Mr. Lam Muk Chiu received either \$ 300 or \$ 350. When pressed on the point he said, well, whatever my statement says, that is correct.

In fact Mr. Wong may have given Mr. Lam Muk Chiu \$300 is a matter, an incident which we don't know or we may never know for what purpose that \$300 was given. Was it given as a gift because Mr. Wong had loaned money from Mr. Lam Muk Chiu? Was it merely given to him to pay for expenses?

Mr. Yip continued with additional falsehoods, he advised you that after he obtained this heroin that David Wong said to him and that Mr. Lam Muk Chiu said to him, We want to go and meet your buyer. Now what actually did happen on cross-examination, Mr. Yip said that is all wrong, he stated that Mr. Wong wanted to go for a short ride and asked to be taken to a coffee shop, which Mr. Yip did. He said that Mr. Wong really wanted to go for a ride for a few blocks.

Now the statement involving those events indicated that Mr. Lam was not a part of that conversation and didn't take part in any conversation involving heroin, and when asked that, Mr. Yip agreed, he said

Let us go back for one moment to the distribution of the \$2400.

Who kept the money?

David Wong.

The only thing that may be true is that David Wong did indeed conspire with Chin Kin Man and Harry Yip to import heroin into the United States. Throughout the entire time that the defendant Lam Muk Chiu was in the United States, February of 1974, there was not one shred of credible evidence that connects the defendant Lam Muk Chiu with any conspiracy at all.

When does Mr. Lam Muk Chiu come in? He comes in subsequent to the date of his departure from the United States. Mr. Yip told us that he had a conversation with David Wong on or about February 15th, David Wong said, Don't worry about a thing, you are going to have plenty of money soon, we will put our partnership into operation. And when questioned who was in the partnership, it was David Wong, Chin Kin Man and Harry Yip. Don't worry, we will have plenty of money, I'm going to send you letters detailing how the heroin is going to come into the United States, and that heroin will certainly be in your hands.

Now subsequent to Lam Muk Chiu's departure from the United States, what happened? A couple of days later David Wong left the country and went to Hong Kong. He certainly knew that Lam Muk Chiu was from Hong Kong.

I submit that the letters and the packages which subsequently came into the United States were not mailed by the defendant Lam Muk Chiu but they were probably mailed as part of the conspiracy and they were mailed by David Wong. David Wong is a very smart person, he would not use his own name.

One of the acts of the conspiracy was that on or about February

16, 1974 the defendant Lam Muk Chiu travelled to San Francisco, California. Not one shred, not even an allegation of evidence to support that contention.

What about San Francisco, why is San Francisco in the indictment? Because David Wong had a connection in San Francisco who could supply pound quantities of heroin, and David Wong said that his San Francisco connection left on February 16th.

Mr. Lam Muk Chiu did not fly to San Francisco. He flew to Los Angeles and left the country that same day.

(B) The Government used in evidence for all eight counts the indictment the telephone calls allegedly made by defendant to Harry Yip to show defendant's involvement in the crimes committed. Hary Yip Lured defendant to return to the United States and in fact the Government reserved a motel room for them. The Government planted a tape recorder in the room which would have shown if defendant's voice was the same as the voice coming from the telephone calls to Harry Yip. Though they have a recording device in the room, they willfully neglected to turn it on.

(Rt. 645-646,659-665,672-674)

What about the telephone recordings. The defendant has denied that the telephone recordings are his voice. Did the Government have an opportunity to have a positive voice identification? You heard Agent Jason, Fenrich and Maher describe the situation at the International Hotel at Kennedy Airport.

At Kennedy Airport at the International Hotel there was a room and in this room which was assigned, taken by the agents prior to the defendant's arrival in this country, there was a tape recorder. In that tape recorder was a cassette and the tape recorder was in working condition.

This is the very same room the defendant Lam Muk Chiu was being taken to and the agents knew that. Here was an opportunity, for the Government to positively identify the voice on the tape with a positive voice identification of the defendant.

The Government has failed to do this. They elected not to do it. Is it because it was not the same voice? I submit to you that is the reason.

(C) That no expert testimony was produced by the Government to show that in fact the letters which were used in evidence on all eight counts of the Indictment were actually written by the defendant. Though defense counsel tried to submit recently acquired specimen of the defendant's handwriting to show that the letters were not in fact in the same handwriting as the defendant's prosecution objected and the said objection was sustained.

(Rt. P 665-670, 674-693)

(D) That the Government before the arrest of the Defendant obtained an arrest warrant but failed to obtain a search warrant that when defendant was arrested items were sought which were not on his person nor in an area which was under his immediate control. That these items were testified to and put into evidence over the objections of defense counsel. These items had an important bearing on the weight of evidence against the defendant. (~~Rt.~~ P. 599-604)

ARGUMENT

POINT I

THE TRIAL JUDGE ERRED IN NOT ALLOWING DEFENDANT TO OFFER EVIDENCE THAT THE LETTERS RECEIVED BY THE CONFIDENTIAL INFORMANT WERE NOT WRITTEN BY HIM. THIS EVIDENCE WOULD HAVE CONSISTS OF EXPERT TESTIMONY COMPARING THE HANDWRITING ON THE LETTERS TO THE HANDWRITING EXEMPLARS WHICH WERE PREPARED BY THE DEFENDANT AFTER HIS ARREST.

The defendant is an indigent. He could not afford to pay the expenses of a witness in Hong Kong who could testify as to his handwriting. The Court under the 18B Panel also was unwilling to supply the large amount of money it would take to get handwriting experts from Hong Kong or at least a witness familiar with the defendant's handwriting.

As a result of the above, defense counsel was limited to handwriting exemplars which were prepared by the defendant prior to the trial. This was not done by choice but rather as a necessity as this was the only means available to defense counsel.

In Clark v. United States, 293F 301 (5th Circuit, 1923), the Court states:

Witnesses may be required to write sentences in court for comparison of their handwriting with that of documents in evidence, and the comparison may be made by an expert, who may state the grounds for his opinion, and also by the jury trying the case. Introduction of this type of evidence is admissible.

In Citizens' Bank & Trust Co. of Middlesboro, Ky. v. Allen, 43 F 2d 549 (4th Circuit 1930), the Court stated:

In Hickory v. U.S., 161 U.S. 303, 14 S.Ct. 334, 335, 38 L. ED. 170, Mr. Chief Justice Fuller, speaking for the court, upheld the

refusal of the trial court to permit a paper, which Hickory testified he had written at the trial table in court that day, to be introduced in evidence for the purpose of comparison, on the ground that the writing had been specially prepared for that purpose.

But we do not think the case controlling, nor do we think the principle applied has any applicability here: First, because the federal statute permitting the introduction of admitted or proved specimens of writing for comparison had not then been passed; and second, because the preparation of a writing secretly and out of the sight of those interested in observing the method of preparation and the writing a number of times by one of one's signature at the request of a court had in the presence of court and jury are quite different things.

Also, it must be brought out that the Government did not try to show by expert testimony that the fingerprint cards signed by the defendant were in the same handwriting as the letters put in evidence. If the handwriting was in fact the same, why did not the Government show this by expert testimony. As stated in U.S. v. Gillette, 383 F 2d 843 (2nd Circuit, 1967):

Absent stipulation that defendant had signed fingerprint cards, expert testimony as to signature on the cards was admissible to establish by handwriting comparison the identity of defendant.

Therefore, since much of the evidence relied upon were the letters which were put into evidence at the trial, a reversal of the decision should be had due to the trial judge's error in not admitting expert testimony to refute that defendant ever wrote those letters.

POINT II

THE TRIAL JUDGE ERRED IN ADMITTING INTO EVIDENCE THE ITEMS SEIZED FROM THE DEFENDANT WHEN THE SAID DEFENDANT WAS ARRESTED WITHOUT FIRST OBTAINING A SEARCH WARRANT. (TRP.599-604.

Though the agents had due time to obtain a search warrant because they knew when and where the defendant was going to be, they only obtained a search warrant. The items seized were in a closed attache case in the room of the arrest. The attache case was not being held by the defendant at the time of the arrest and since there were several arresting officers each holding the defendant, there was no chance for him to reach the said attache case.

In Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed 2d 685(1969), the Court stated:

A similar analysis underlies the "search incident to arrest" principle, and marks its proper extent. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control"- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs-or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant. The "adherence to judicial processes" mandated by the Fourth Amendment requires no less.

Therefore, a reversal is in order as it is clear from the testimony that the attache case was not on the defendant's person or in the area within his immediate control, i.e., the area which he might gain possession of a weapon or destructible evidence. The trial judge erred in admitting testimony as to the items recovered from the illegal search and seizure.

POINT III

THE JUDGMENT AGAINST THE DEFENDANT SHOULD BE REVERSED DUE TO THE FACT, THAT UPON ALL THE EVIDENCE ADDUCED AT THE TRIAL, PLAINTIFF FAILED TO SUSTAIN HIS BURDEN OF PROOF AND A DECISION SHOULD HAVE BEEN DIRECTED FOR THE DEFENDANT.

The Government's main witness, Mr. Yip, a paid informer's testimony is replete with admitted misstatements and outright lies. He failed to show that the defendant was in any way connected with the criminal acts conducted by the various other proplr who in fact committed the criminal acts.

The Government though they had ample opportunity to record defendant's voice willfully neglected to do so. This prevented any expert testimony as to the comparison of defendant's voice and that of the person who talked over the phone with Harry Yip and planned the criminal acts. This failure to record defendant's voice when there was an opportunity to do must be construed strongly against the Government. Their failure to provide this tape recording of the defendant should invalidate all the other tape recordings of the phone calls to Harry Yip and said evidence should have been disallowed at the trial or in the alternative, the trial judge should have stated to the jury that an inference be had that it was not the defendant's voice on the phone calls to Harry Yip. Said inference should have been stated due to the fact that the Government obviously had the opportunity to provide voice comparison but willfully those not to implement that said opportunity.

Besides the arguments just presented, the Government did not demonstrate, by expert testimony, that the letters allegedly written by the defendant were in fact in his handwriting. They also

prevented defense counsel from proving that the letters were not in the defendant's handwriting. Also evidence used at the trial was illegally seized from the defendant pursuant to his arrest.

Therefore from the weight of the evidence, it is obvious that the prosecution failed to sustain their burden of proof. The trial judge should have directed a verdict in favor of the defendant dismissing the action.

CONCLUSION

Due to the reasons which have been presented in this appeal, it is argued that the decision rendered by the Court below should be reversed and that the defendant should be set free, or in the alternative, the Government should be required to give this defendant a speedy new trial.

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Q Sir, have you ever been convicted of a crime?

A Yes.

Q Tell the Court and jury what crimes those were that you were convicted of?

A Thw first conviction was for possession of three pounds of heroin.

Q Is that a conviction? Were you convicted in this courthouse, the Eastern District of New York?

A Yes, sir.

Q And were you sentenced to five years' imprisonment in that case?

A Yes, sir.

Q And was that sentence stayed for the time being?

A Yes, I'm on bail.

Q And were you convicted after that, sir, of a crime?

A Yes.

Q And where and what was that, sir?

A In the state court.

Q Were you convicted of criminal possession of dangerous drugs in the fourth degree?

A I was convicted of possession of about one-third of an ounce of heroin.

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Q Did you serve that six months on that charge?

A Yes.

Q Other than that, do you have any other felony convictions?

A No.

Q Some time in 1973, did you agree to work for agents of the Drug Enforcement Administration?

A Yes.

Q Was this because you were sentenced to five years and you hoped if you cooperated, your sentence might be reduced?

A Yes, it was for the hope that the sentence might be reduced and also I feel very regretful for what I have done before and I would like to make amends.

Q At the time of your sentencing in the state court, was it brought to the judge's attention that you were working for the agent of the Drug Enforcement Administration.

A Yes, sir

Q Has anyone promised you, Mr. Yip, that your sentence would be reduced if you cooperated with the agent?

A No.

Q In January of 1974, were you working with the agents of the Drug Enforcement Administration?

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A Yes, sir.

Q And were you getting paid by them for your work?

A Yes, sir.

Q How much were you getting paid?

A They pay me \$250 a month.

MR. MR. CLAYMAN: At this time, your Honor, I would like to suspend until tomorrow morning.

THE COURT: All right, step down, Mr. Vip.

We are going to suspend until tomorrow morning. When you come in tomorrow morning, report first to the central jury room downstairs, check in so they will know you are in, then come up here; the Clerk will show you on the way out where you come in to the rear door and go into the jury room. Try to be downstairs at a quarter to ten and be up here at ten to ten and we will try and start at ten o'clock.

Sometimes the court gets a little delayed, if I could get everyone here together, then we could accomplish a lot, we'll do a lot.

To give you some idea of scheduling, tomorrow afternoon we will have to adjourn at three o'clock because of other commitments, and Friday morning

Yip-cross

THE COURT: I say you are in a dual capacity.

So perhaps it is just as well you have forgotten.

(End of side bar.)

Q At the conversation you just described to us, Agent Jason requested your cooperation; is that correct?

A Yes.

Q In exchange for your cooperation, did Mr. Jason offer you anything?

A No promises were made.

Q Did Mr. Jason say that certain things might happen to help you?

THE INTERPRETER: Would you ask the question again?

(Record read.)

THE WITNESS: He said if I cooperated with the Government it can be beneficial to me.

Q By beneficial to you, did he explain what he meant by that term?

A It's regarding the arrests on June 1973.

Q Did he tell you how your cooperation could be beneficial?

A There is hope that I might receive some -- it might be beneficial to me.

Q Did he tell you how your cooperation might be

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Yip-cross

beneficial to you?

MR. CLAYMAN: Your Honor, I object.

THE COURT: That's the same question.

MR. ROSENFELD: The witness hasn't answered it yet.

THE COURT: Yes, he did. You can ask another question.

Q Mr. Yip, do you know what the word "beneficial" means?

MR. CLAYMAN: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q When Mr. Jason spoke about items or things which could be beneficial to you, did he mention seeing your wife?

A He mentioned about the 1973, June arrest.

Q Did Mr. Jason say that your cooperation with reference -- withdrawn.

Did Mr. Jason say that your cooperation would allow you to see your wife?

A Yes. He had said that.

Q Had you seen your baby?

A Yes. In Court.

Q And Mr. Jason said if you cooperate you will

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Yip-cross

be able to be with your baby?

A No.

Q But he said you might be able to be with your baby?

A Possible.

Q And he would do everything he could to help you if you would help him?

MR. CLAYMAN: Is that a question, your Honor, or a statement?

MR. ROSENFELD: Yes, it is a question.

THE COURT: Yes, it is a question.

THE WITNESS: He said if I am willing to cooperate with the Government, the Government will help me regarding this case on June, 1973.

Q Did he tell you how the Government would help you?

A No.

Q Did you discuss anything else with Agent Jason on this day in September?

A Just asked whether I would be willing to cooperate with the Government. No threats were used.

Q But he did promise to help you if you helped him?

A He said that they might help me, but they have not made any specific promise.

1
4 2 A Yes.

3 Q By large amounts, did he tell you that he meant
4 multi-pound quantities?

5 A Yes.

6 Q And did he mention as an example the three
7 pounds that you had been previously arrested and convicted
8 for possession?

9 THE INTERPRETER: Please repeat the question.

10 (Previous question read.)

11 A No, he did not mention that.

12 Q Did Agent Jason then tell you that the only
13 way to help yourself was by producing arrest information,
14 leading to the arrest and conviction of a large volume heroin
15 -- withdraw the word heroin -- narcotic transaction?

16 THE WITNESS: Please repeat the question.

17 (Previous question read.)

18 A Yes.

19 Q Did he tell you that he was not interested and
20 that no help would be given to you for small amounts of
21 heroin that you might supply to him?

22 THE INTERPRETER: Would you repeat that, please.

23 (Previous question read.)

24 A No, he never said that.

25 Q Did you discuss anything else with Agent Jason

Yip-cross

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THE INTERPRETER: Yes.

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Q Did he give any information to the agents regarding any of the defendants involved in this case?

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THE WITNESS: That includes the day of February 4th?

7

8

Q I'd rather exclude February 4th.

9

THE COURT: All right, excluding the 4th.

10

THE WITNESS: Excluding February 4th.

11

THE INTERPRETER: So it would be February 3rd, then.

12

MR. ROSENFELD: Inclusive.

13

THE COURT: Yes.

14

THE WITNESS: No, I did not.

15

BY MR. ROSENFELD:

16

17

Q Was February 4th the first date that you gave information to agents of the Federal Government regarding narcotic trafficking and the defendants in this case?

18

19

A Yes.

20

Q On February 4th, you met Chin Kin Man?

21

THE INTERPRETER: You met him for the first time?

22

Q Did you meet Chin Kin Man?

23

A Yes.

24

Q How long did you know Chin Kin Man?

25

A Several years.

2 Q Did you know Chin KinMan when you lived in
3 Hong Kong?

4 A No.

5 Q How did you become acquainted with Chin Ki-
6 Man?

7 A We met at the association.

8 Q Was Chin Kin Man a heroin user?

9 A Yes.

10 Q In the past did you sell heroin to him?

11 A No.

12 Q How do you know he was a heroin user?

13 MR. CLAYMAN: Objection, to the form of the
14 question.

15 THE COURT: No, I will allow it.

16 THE WITNESS: At the association, downstairs,
17 this is where people use heroin.

18 THE COURT: What is the association?

19 THE WITNESS: It's a gambling place.

20 THE COURT: Where is it located?

21 THE WITNESS: Number 29 Division Street.

22 THE COURT: In New York?

23 THE WITNESS: Manhattan.

24 BY MR. ROSENFELD:

25 Q Is it true that because Mr. Chin Kin Man was

2 downstairs that you assumed he was a heroin user?

3 A I saw him using it.

4 O Now, from the time you were employed as an
5 informer until February 4th, had you been down to the asso-
6 ciation at all?

7 THE INTERPRETER: At the time of what?

8 (Record read.)

9 THE WITNESS: No.

10 O Is there a lot of heroin transaction in the
11 basement of the association?

12 THE COURT: Do you mean buy, sale or use?

13 O I will make it either buy, purchase or sale or
14 use.

15 THE INTERPRETER: I didn't understand the
16 question.

17 THE COURT: Neither did I.

18 THE WITNESS: Mostly I have seen people using
19 heroin there.

20 O When was the first time you went to the associa-
21 tion after you were employed as an informer?

22 MR. CLAYMAN: Objection to the form of the
23 question, your Honor; assuming a fact not in evidence.

24 THE COURT: No, I will allow it.

25 He can say, "Never."

THE INTERPRETER: Would you mind repeating the question.

(Record read.)

THE WITNESS: I have not been back to the association.

Q You were employed for the purpose of finding places to buy heroin or sell heroin; is that correct?

A Yes.

Q But you never went to the association?

MR. CLAYMAN: Objection. Argumentative.

THE COURT: I will allow it.

THE WITNESS: By then the gambling joint had closed down.

Q Is the association still open today, to the best of your knowledge?

A The gambling joint was closed, but the association was still there.

Q Was the basement room still open?

A If it's closed closed, how can it be open?

Q Is the association opened or closed, Mr. Yip?

A I have already answered that the association was still there.

Q Have you been there since January, 1974?

A No.

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2 O If you have not been there, you do not really
3 know whether it is opened or closed, do you?

4 MR. CLAYMAN: Objection.

5 O Do you?

6 MR. CLAYMAN: Objection.

7 THE COURT: Sustained. Don't answer.

8 O Mr. Vip, when you met Chin Kin Man on February
9 4th, 1974, was it a pre-planned meeting?

10 THE COURT: Wait a minute. Pre-planned by
11 whom?

12 MR. ROSENFELD: I would like to know whether
13 it was pre-planned first.

14 THE COURT: All right. Maybe he can answer.
15 Go ahead.

16 THE WITNESS: I was supposed to go to his home
17 to look for him.

18 O Did you decide to go to his home of your own
19 idea?

20 A No.

21 O Did somebody tell you to go to Chin Kin Man's
22 house?

23 A Yes.

24 O Will you please tell us who told you to go to
25 Chin Kin Man's house?

Yip-cross

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A The agent.

3

O Is Chin Kin Man known by any other name?

4

A Yes.

5

O Is that name Paul?

6

A Yes.

7

O Do you know where Chin Kin Man lives?

8

A Yes.

9

O Please tell us where he lives.

10

A He lived on Avenue B between 12th and 13th

11

Street.

12

O Was Chin Kin Man ever arrested with you?

13

A No.

14

O When was the first time you met Won Hong Kam?

15

A In 1973.

16

O '73, sir?

17

A Yes.

EK fls 18

(Continued on next page.)

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Yip-cross

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2 Q You did not know him previous to 1973 in any
3 relation whatsoever?

4 A It's been a long time and I'm not that clear
5 about 1972 or 1973.

6 Q Is Wong Han Kan known by any other name?

7 A Yes.

8 Q Is that David Wong?

9 A Yes.

10 Q Is it the same David Wong that you met on
11 February 4th?

12 A Yes.

13 Q I would appreciate it if, Mr. Yip, if you could
14 take some time and think very carefully as to when you met
15 David Wong, also known as Wong Han Kan.

16 A In 1972.

17 Q On what occasion did you meet David Wong in
18 1972?

19 A I saw him every day.

20 Q Where did you see him?

21 A He was a waiter at the Wei Long coffee shop.

22 Q Did you have conversations with Mr. Wong at
23 that time?

24 A What kind of conversation?

25 Q Did you discuss anything with Mr. Wong at that

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-?

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A Yes, we say hello to each other, How are you.

4

Q Did you buy heroin from Mr. Wong in 1972?

5

A No.

6

Q Did you know that Mr. Wong dealt in heroin in

7

1972?

8

A No, I don't.

9

Q Was Mr. Wong a ship jumper?

10

A From hearing, everybody seemed to say he was

11

a ship jumper.

12

Q Did you know that Mr. Wong was a ship jumper

13

of your own knowledge?

14

A At first I only heard it from other people around,

15

later on he himself told me and --

16

MR. ROSENFELD: Your Honor, may I --

17

THE INTERPRETER: Let me finish translating.

18

THE COURT: Let her finish

19

A He also told me that he jumped ship.

20

MR. ROSENFELD: Your Honor, the answer is non-

21

responsive

22

THE COURT: That is a good answer.

23

MR. ROSENFELD: Thank you.

24

THE COURT: It is an accurate answer, or maybe

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it is up to the Jury to determine that, but he answered

Yip-cross

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your question.

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BY MR. ROSENFELD:

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Q When Mr. Wong told you he was a ship jumper, did he also tell you it was possible for him to obtain green cards, meaning immigration certificates for friends of yours for a certain price?

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A No, he did not tell me.

Q Did he tell you that he sold heroin?

A No.

THE COURT: When I said it was an accurate answer, I only meant in the sense it was accurate in answer to the question asked, I'm sure you realize that I am not trying to usurp your function as to whether it is accurate or not.

Q On February 4th, you were waiting for Chin Kin Man outside of his apartment; is that correct?

A What street, which apartment, I would like to know.

Q Were you waiting in front of Chin Kin Man's apartment?

MR. CLAYMAN: What time? At any time?

THE COURT: He said on February 4th, were you waiting in front of Chin Kin Man's apartment?

A I went to the apartment, I didn't wait for him

2 outside.

3 Q You went upstairs to Mr.Chin Kin Man's apart-
4 ment?

5 A It is not upstairs, it is straight in.

6 Q Did you go to his apartment?

7 A Yes, I pressed the bell, he opened the door
8 and I went in.

9 Q Anyone in the apartment other than you and
10 Chin Kin Man?

11 A No, no.

12 Q You had a conversation with Chin Kin Man with
13 reference to heroin at that time; is that right?

14 A Yes.

15 Q After that conversation and as a result of that
16 conversation, did Chin Kin Man take you to an apartment
17 on 11th Street and 1st Avenue?

18 A Yes.

19 Q And did Chin Kin Man tell you that he would
20 put you in contact with someone who could sell you large
21 quantities of white powder, heroin?

22 A Yes.

23 Q When you got to 11th Street and 1st Avenue, did
24 Chin Kin Man get out of the car that you were in?

25 A He got out of the car and he went upstairs.

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Q You stayed in the car?

A Yes.

Q And as you were sitting in the car, David Wong walked by?

A Yes.

Q Did you greet David Wong first or did he greet you first?

A He greeted me first

Q And you knew David Wong personally?

A Yes.

Q You knew him to be a ship jumper?

A Yes.

Q Did you know that he supplied heroin?

A At that time I didn't know, but afterwards I knew.

Q Just at that time did you know that David Wong supplied heroin?

A No, I don't.

Q Now just to go back for a moment to the terms of your employment.

How often were you to report to agents of the Drug Enforcement Administration?

A I was in contact with them every day.

Q And the agents to whom you made all your

2 reports to were Agents Jason and Fenrich; is that correct?

3 A Yes.

4 Q And you were to report to them every single
5 day?

6 A Yes.

7 Q And when you reported to them, did you tell
8 them what happened to you during the day?

9 A Yes.

10 Q Isn't it true that on February 6th -- withdrawn.
11 You stated that you did not know that David
12 Wong supplied heroin to Chin Kin Man on February 4th; is that
13 correct?

14 THE INTERPRETER: I didn't get the full question.

15 THE COURT: Isn't it true that on February 4th,
16 you didn't know Chin Kin Man was supplied heroin by
17 David Wong.

18 THE INTERPRETER: On February 4th, he didn't
19 know --

20 THE COURT: Wait a minute, wait a minute.

21 Read it back, Mr. Karr.

22 (Previous question read.)

23 A When I met him on the street downstairs, that
24 was when you asked me, when we met at that time I didn't know,
25 but when he went upstairs, then I knew.

2 Q Did David Wong tell you that he supplied heroin?

3 A No, Chin Kin Man tell me first.

4 Q Did David Wong confirm to you that he sold
5 heroin?

6 A Yes.

7 Q Did David Wong tell you that he could supply
8 you with large quantities of heroin?

9 A He only said he can get heroin for me, but the
10 large amount was sold to me by Lam Muk Chiu.

11 MR. ROSENFELD: I move to strike that.

12 THE COURT: Read back the question.

13 (Previous question read.)

14 THE COURT: Can you answer that question yes
15 or no?

16 Repeat the question again, repeat the question.

17 (Previous question read.)

18 A Not a large amount.

19 Q On February 4th, was white powder, heroin,
20 shown to you?

21 A It was on the table.

22 Q Did anyone point it out to you?

23 A Chin Kin Man was using it.

24 Q How do you know it was heroin?

25 A Chin Kin Man asked me to taste some also.

Vip-cross

Q Isn't it true that you advised the agents on February 6th, that Wong showed you the heroin?

A Yes.

Q On February 4th -- isn't it -- withdrawn. Isn't it true that on February 4th, in the apartment on 11th Street there were three people of which you knew only two?

A Yes.

Q The two people whom you knew were Chin Man and David Wong?

A Yes.

Q Anything that was said by anyone else in this room you had no idea at that time who may have said it?

MR. CLAYMAN: I object to the form of that question, your Honor.

THE COURT: I will allow him to answer it if he can.

MR. ROSENFELD: I will withdraw the question, Judge.

BY MR. ROSENFELD:

Q On February 5th, Mr. Vip, did you go back to the apartment on 11th Street and First avenue?

A Yes.

Q And didn't you have a discussion with David

2 Wong on that date?

3 A I talked with all three of them.

4 Q Did you have a discussion with David Wong
5 himself on February 5, 1974, in the apartment on 11th Street
6 and 1st Avenue?

7 A Yes.

8 Q Didn't David Wong tell you at that time that
9 he, David Wong, had large quantities of heroin in the
10 United States?

11 A Not told to me by David Wong.

12 Q Do you recall conversations you had with Agents
13 Fenrich and Jason on February 6th, 1974?

14 THE INTERPRETER: Are you asking about February?

15 Q Did you have a conversation with Agents Jason
16 and Fenrich on February 6th, 1974?

17 A Yes, but --

18 Q And during that conversation did you tell
19 Agents Jason and Fenrich what transpired between February
20 4th, and February 6th, 1974?

21 A Yes, I told them.

22 Q Did you have any contact with Agents Jason and
23 Fenrich on January 4th -- withdrawn.

24 On February 4, 1979 --

25 A I always reported to them.

2 B

Q But did you report to them on February 4th?

3

A There should be a conversation with them.

4

Q Did you report to them on February 5th?

5

A Yes.

6

Q Did you report to them on February 6th?

7

A Yes, all the more.

8

Q When you spoke with Agents Fenrich and Jason

9

on -- excuse me -- on February 5th, did they take a report

10

from you?

11

A I don't know.

12

If you want to look at their records, it should

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be there.

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(Continued on next page.)

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EK 2/2 pm

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Q Did you see them taking notes of what you discussed with them on February 5th?

A I can't remember all the little details.

Q Did you report to them on February 4th?

A By right I should have. By right I should have reported to them.

Q But did you or didn't you?

A Yes, I telephone to report to them.

Q Did you report to them on February 7th?

A Yes.

Q Did you report to them on February 8th?

A Report what?

Q Did you report to Agent Jason or Fenrich on February 8th?

A Yes.

Q Did you make any statements to Agent Fenrich or Jason on any of those dates?

A Yes.

Q On what dates did you make statements?

A I don't remember the exact date, but if you want to give me the records, I have my signature, I signed.

Q Did you make more than one -- withdrawn.

THE COURT: You are talking about written statements?

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MR. ROSENFELD: Yes, your Honor.

THE COURT: It is not that clear.

MR. CLAYMAN: It hasn't been made clear to the witness.

MR. ROSENFELD: All right.

THE COURT: He said he reported every day and then you say, Did you make a statement? Now the statement could be just the statement he made.

MR. ROSENFELD: I will get to that, your Honor.

Q Between February 4th and February 8th, did you make any written statements to the agents?

A Yes.

Q How many?

A I am not clear on exactly how many.

Q Did you make -- Withdrawn.

Did you make more than one written statement in that time period?

A Yes, quite possible.

Q Do you know for certain whether there was more than one?

A I'm not exact on that. It could be one or two.

Q Could it be three?

A It could be possible.

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2 Q Would it be fair to state that what you gave
3 in the written statements was a true and accurate repetition
4 of what occurred on the dates between February 4th and
5 February 8th, 1974?

6 A Yes.

7 Q Let us try it again, then, Mr. Yip --

8 MR. CLAYMAN: Objection, your Honor, on the
9 comment.

10 THE COURT: Yes.

11 Q On February 4th you were sitting in a car in
12 front of the apartment on 11th Street and First Avenue; is that
13 correct?

14 A Yes.

15 Q David Wong walked by?

16 A Yes.

17 Q He says hello to you?

18 A Yes.

19 Q He says hello to you before you say hello to
20 him?

21 A Yes.

22 Q When you went up to the apartment with David
23 Wong, did David Wong show you the white powder, heroin?

24 A No.

25 MR. ROSENFELD: May I have this marked for

1
2 identification, please.

3 THE CLERK: The one page?

4 MR. ROSENFELD: No, I want the whole thing
5 marked for identification.

6 THE CLERK: Three pages marked for identifi-
7 cation as Defendant's Exhibit B.

8 (So marked)

9 MR. ROSENFELD: Your Honor, Defendant's B is
10 a statement --

11 THE COURT: Don't tell us what it is.

12 MR. ROSENFELD: May we have a side bar for a
13 minute?

14 THE COURT: Yes.

15 (The following occurred at side bar without
16 the hearing of the jury.)

17 MR. ROSENFELD: This is a copy of a statement,
18 I would like to have the original produced by the
19 Government at this time.

20 MR. CLAYMAN: That is the exact copy of the
21 original.

22 THE COURT: The copy is not signed.

23 MR. CLAYMAN: Excuse me.

24 THE COURT: I say the copy is not signed.

25 MR. CLAYMAN: The trouble is that the original

Yip-cross

which is signed is upstairs.

THE COURT: Produce the original, please.

MR. CLAYMAN: The agent is going upstairs to get it.

THE COURT: Has he got it here?

MR. CLAYMAN: He has it upstairs. It is in the informant's file. He has to go up and get it.

THE COURT: We will take a five-minute recess.

(The trial then proceeded within the hearing of the jury.)

THE COURT: Ladies and gentlemen: We have to get a document that is not located in the courtroom, so we will take our five-minute afternoon recess.

(At 3:30 o'clock p.m. a five-minute recess was taken.)

(The jury then returned to the jury box.)

MR. CLAYMAN: Your Honor, Mr. Rosenfeld has been given a copy of the statement.

Here comes the agent.

CONTINUED CROSS EXAMINATION

BY MR. ROSENFELD:

Q Mr. Yip, I have a statement you gave Agent Jayson and Fenrich on February 8th.

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Is this your signature over here?

A Yes.

Q Do you recall making this statement?

A Yes.

Q In this statement you state --

MR. CLAYMAN: Objection, your Honor.

THE COURT: Yes, unless you offer it in evidence.

MR. ROSENFELD: I offer it in evidence.

MR. CLAYMAN: Objection.

THE COURT: On what ground?

MR. CLAYMAN: If he is going to refresh the recollection of this witness --

THE COURT: It is his statement. He can offer it into evidence.

MR. CLAYMAN: Very well.

THE COURT: If he has anything inconsistent with what he said --

MR. CLAYMAN: There is no objection.

THE COURT: This will be admitted into evidence.

MR. ROSENFELD: Will that be in evidence, your Honor?

THE COURT: Yes.

1
2 THE CLERK: Statement received in evidence
3 as Defendant's Exhibit B.

4 (So marked)

5 THE COURT: It is the same as the other
6 exhibit.

7 MR. ROSENFELD: Thank you.

8 Q Mr. Yip, in this statement you say, "I saw
9 David Wong, a man I knew, walk by my car. I called to him."

10 Is that a correct statement, Mr. Yip?

11 A If that is what the statement says, then it
12 must be correct.

13 Q Your testimony here --

14 MR. CLAYMAN: Objection, your Honor.

15 THE COURT: No.

16 "Didn't you testify?"

17 Q Did you just testify, Mr. Yip, that you called
18 to Mr. Wong?

19 A At that time the statement was not read to me,
20 now that my memory has been refreshed, if that is what the
21 statement says, then that is the correct one.

22 Q Then your testimony is incorrect?

23 A Yes.

24 Q Further on in the statement you say that
25 "Wong showed me some white powder, heroin."

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Is that correct, Mr. Yip?

A If that is what the statement says, it is correct.

Q Your testimony, once again, is incorrect?

A At the time, the time lapse has been very long.

Q So your testimony here is incorrect. Will you please answer the question?

A Yes, it is incorrect.

Q You testified earlier and stated that Lam -- Withdraw that.

On February 5th did you return to the apartment?

A Yes.

Q In your testimony a few days ago did you state this to the Court and the jury, that Chin Kin Man told you that David Wong was returning to Hong Kong because he had no money?

A Quite possible.

Q The testimony which you gave was:

"Question: What if anything occurred in the apartment on February 5, 1974?

"Answer: After I sat down Chin Kin Man told me that David Wong would like to go back to Hong

Yip-cross

Kong because he doesn't have any money here."

Is that a true statement, Mr. Yip?

A It could be correct; it could be incorrect,
I am not too clear.

Q The statement says, again referring to
Exhibit B:

"Wong said he was going back to Hong Kong
because he could not make business in the United
States."

A Yes.

Q Is your statement correct?

THE INTERPRETER: You mean this present?

MR. ROSENFELD: Yes.

A Yes.

Q Your testimony is incorrect?

MR. CLAYMAN: Objection, your Honor.

THE COURT: In one case he says that Chin Kin
Man said that he was going back and he didn't have
money; in the other case he said that Wong told him.

Now one of them is incorrect.

MR. CLAYMAN: Well, maybe both of them told
him that. That question hasn't been asked.

THE COURT: Did Chin Kin Man tell that to you?
Or did David Wong?

Yip-cross

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2 THE WITNESS: Go according to the statement,
3 whatever the statement says at that time when I re-
4 ported.

5 Q On February 5th did Wong advise you that he
6 had heroin in the United States?

7 A Could be possible.

8 Q Did David Wong tell you on that date that he
9 had large quantities of heroin in the United States?

10 A Could be possible.

11 Q And it could not be possible?

12 A Refer to the statement, then, because so much
13 time has gone by.

14 Q Mr. Yip, a lot of time has gone by, you have
15 given testimony in this case. Is the testimony which you
16 gave in court true or false?

17 A I try to recall to the best of my ability,
18 and whatever else was reported, it was reported at the time
19 when right after the thing took place.

20 Q So the testimony which you gave here which was
21 recorded such a long time after February 1974, may be totally
22 inaccurate?

23 A No, I cannot be giving false testimony.

24 Q You just told us as to two points so far you
25 did give false testimony.

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2 A We are human and people can make mistakes, and
3 I have made mistakes.

4 Q Are there any other mistakes that you know of
5 right now in the testimony you gave?

6 A No.

7 Q Isn't it a fact that Lam Mok Chu was involved
8 in importing heroin?

9 THE INTERPRETER: May I have that question,
10 please?

11 (The previous question was read.)

12 A That is unreasonable.

13 Q Do you recall whether Mr. Wong on February 5th
14 said he had heroin?

15 A He could have said that.

16 Q Do you remember?

17 A I would like to refer to my statement as to
18 what I did say.

19 Q Mr. Yip, you gave testimony yesterday, today,
20 Friday and Thursday. Were you referring to any documents
21 when you gave testimony at that time?

22 THE INTERPRETER: May I have the question
23 again?

24 (Previous question read.)

25 A No, I didn't use testimony.

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Q You did give the Court and you did tell the jury about specific incidents on specific dates; isn't that correct?

A Yes.

Q You recalled those dates and those incidents very well at that time; is that correct?

A I was refreshed by the letters because of the dates on them and the tapes with the dates on them.

Q But you also referred to incidents prior to the tapes, prior to the receipt of the letters, and you told the jury certain things which occurred during February of 1974, in the period between February 4th and February 18th?

A Yes.

Q And those incidents and occurrences you were very exact about?

A Yes, when I was shown the dates and specific documents, I was clear as to those.

Q Did you review your testimony with the United States Attorney prior to your testifying?

A Yes.

Q And you carefully reviewed the documentation; is that correct?

A That is the District Attorney's business.

Yip-cross

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2 Q That is the business of this court and the
3 jury, to find out whether you are telling the truth or not.

4 MR. CLAYMAN: Objection, your Honor, a state-
5 ment made by counsel.

6 THE COURT: Sustained.

7 Q So where we have found out about February 4th,
8 you have told us at this point that the testimony you gave
9 us is incorrect as to that point?

10 MR. CLAYMAN: Objection.

11 THE COURT: Disregard that statement by
12 counsel.

13 He said in two particulars he was mistaken.

14 Don't make improper statements to the jury,
15 Mr. Rosenfeld.

16 Q On February 5, did you request any one of
17 the defendants involved in this case to obtain heroin for you?

18 THE INTERPRETER: Would you repeat it, please.

19 (Previous question read.)

20 A The conversation was in general.

21 ---

Yip-cross

3/1 JB pm

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Q Do you recall any part of the conversation dealing with heroin?

A I am not clear on that.

Q Did David Wong tell you on February 5th that he could obtain heroin for you?

A Quite possible.

Q Did you discuss the price with David Wong on February 5th?

A We were all there; we were all discussing it together.

Q Do you remember who you discussed the price of the heroin with?

MR. CLAYMAN: Objection. It has been asked and answered.

THE COURT: I don't know how many times, but I will let him answer again.

A I am not clear on that.

Q Your statement states that I -- Wong said if we get \$1,000 Chiu would get things straightened out, he can stay in the United States.

I asked him if he had heroin now, and he said yes. I asked him if he can get me an ounce of heroin and he said yes. Wong said the ounce would be 28 spoons and would cost \$2400.

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2 Is that a correct statement?

3 A Yes.

4 MR. CLAYMAN: Your Honor, at this time can
5 I ask that the entire statement, Defendant's
6 Exhibit --

7 THE COURT: You can read the balance of it.

8 MR. CLAYMAN: I am sorry.

9 THE COURT: You can read it. It's in
10 evidence. You can read it when he is finished
11 with it.

12 MR. CLAYMAN: Very good, thank you.

13 Q Did you discuss with David Wong on that date
14 a partnership for importation of heroin, which partnership
15 would consist of you, David Wong, and Chin Kin Man?

16 A They are more than three. Lam Muk Chiu was
17 also there.

18 Q I am reading the statement again.

19 "I said I would check with my customer. And
20 Wong said that I would have to let him know quick. Wong
21 said that if I could sell the ounce for him, he could stay
22 in the United States and make business as partners with
23 Chin and me."

24 Is that correct, Mr. Yip?

25 A If that's what the statement says, then it
stands.

Yip-cross

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2 Q There is no mention of Mr. Lam Muk Chiu in
3 your statement.

4 MR. CLAYMAN: Objection.

5 Q With reference to the partnership.

6 THE COURT: Are you making that as a state-
7 ment, or is that a question?

8 MR. ROSENFELD: I want to --

9 THE COURT: Put it in terms of a question,
10 not in terms of a statement, because the jury will
11 disregard it if it is in the form of a statement.

12 Q Is your statement correct that the partnership
13 was to consist of Chin Kin Man, you and David Wong?

14 A It could be said it's correct.

15 Q Would it be correct, then, to say that your
16 testimony involving Lam Muk Chiu in this partnership would
17 be --is incorrect?

18 A That is not the way that I would like to put it.

19 Q You put it very well in your statement,

20 MR. CLAYMAN: Objection, your Honor.

21 THE COURT: Yes, sustained.

22 Ask questions. You should not make statements.
23 If you do it once more, then I am going to take some
24 action.

25 MR. ROSENFELD: Excuse me.

Yip-cross

THE COURT: Do not make statements.

Ask questions.

Disregard that statement.

MR. ROSENFELD: Excuse me, your Honor.

Q Did Mr. Wong advise you that he frequently mailed or shipped heroin to the United States from Hong Kong?

A Possible he may have.

Q Did he tell you that he desired to form a relationship with you and Chin Kin Man in the United States so he could regularly continue to mail or ship heroin?

A Could be possible that he has said that.

Q As of February 6, 1974, were you introduced to Lam Muk Chiu?

A I already had met him on February 4th.

Q WERE you introduced to Lam Muk Chiu on February 4th?

A Yes.

Q Who introduced you to Lam Muk Chiu?

A It could be Chin Kin Man.

Q Could it be Wong Kon Kom or David Wong?

A Could be possible.

Q Did you give a description of Lam Muk Chiu to the agents on February 8th?

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2 A I did not give a detailed description of Mr.
3 Lam to the agents. At that time they thought that David
4 Wong was the big dealer.

5 Q Did they think David Wong -- if you know --
6 did they think David Wong was the big dealer because of the
7 information which you provided?

8 A It could be from the statement that I had made
9 to them.

10 Q Is it true that on February 6th -- Withdraw
11 what.

12 Did you ever give a description of an unknown
13 person to Agents Jansen and Fenrich?

14 MR. CLAYMAN: Your Honor, could we have some
15 time span?

16 Q Between January -- February 4th and February
17 6th?

18 A I could have and I could have not.

19 Q If you could have, could that unknown man
20 have been Lam Muk Chiu?

21 A It's quite possible it could be him.

22 Q And the man would be unknown because he had
23 not been introduced to you; is that correct?

24 A What time period?

25 Q Between February 4th and February 6th.

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2 A I could have reported the unknown to them.
3 But at that time their concentration was on David Wong.

4 Q Is it possible that you were not introduced
5 to Lam Muk Chiu until February 7th or February 8th?

6 A No, that's not possible.

7 Q Do you recall the first date that you advised
8 the agents that the third person at the apartment was Lam
9 Muk Chiu?

10 A I would like to refer to my statement.

11 Q Can you remember without looking at your
12 statement?

13 A I am not too clear on that.

14 Q Did you report to the agents on February 4th?

15 A Yes.

16 Q Do you recall whether you told the agents
17 about Lam Muk Chiu on February 4th?

18 A I recall the report was mostly about David
19 Wong, because I had known him longer.

20 Q Did you know David Wong as a heroin dealer?

21 A After February 4th, I knew.

22 Q Did you know before February 4th?

23 A No, not before the 4th.

24 Q On February 6th, you returned to the apartment
25 on 11th Street and 1st Avenue; is that correct?

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A Yes.

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Q Did you tell Mr. Wong that you had a customer
for heroin?

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A Quite possible.

6

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Q Was a bottle of heroin displayed to you at
that time?

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A Is it the 6th?

9

Q On February 6th.

10

A Yes.

11

Q Who displayed the bottle of heroin to you?

12

A It's quite possible it was David Wong.

13

Q Is it also possible that it was Chin Kin Man?

14

A Quite possible.

15

16

Q Did you discuss the partnership with Mr. Wong
that Mr. Wong mentioned to you the previous day?

17

A Yes.

18

19

Q That was the partnership between you, David
Wong and Chin Kin Man; is that correct?

20

A That statement is not correct.

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22

Q Wong said that if I could sell the ounce for
him, he could stay in the United States and make business
as partners with Chin and me.

23

24

That's your statement. Is it correct?

25

A He said that the share was to be divided two

ways, one for --

Q Excuse me. Is your statement correct?

A Correct.

Q Is it correct as to the partners involved in the partnership, to wit, you, David Wong, and Chin Kin Man?

A Yes, you can put it that way.

Q You did put it that way, didn't you, Mr. Yip?

MR. CLAYMAN: Objection, your Honor.

THE COURT: No, I will allow it.

THE WITNESS: Yes.

Q On February 6th, you discussed the partnership with Mr. Wong; is that correct?

A Yes.

Q And Mr. Wong described -- Withdrawn.

Did Mr. Wong describe to you the methods he used to ship or mail heroin to the United States?

THE INTERPRETER: You're talking about February 6th?

MR. ROSENFELD: Yes.

A I'm not clear on that.

Q On February 6th did you take out a sample of heroin from Mr. Wong?

A Yes.

Q Did you take an ounce of heroin from Mr. Wong?

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2 on February 6th?

3 A Yes.

4 Q You took the sample and the ounce on February
5 6th; is that correct?

6 A No, incorrect.

7 Q Did you just take the sample on February 6th,
8 or did you just take the ounce on February 6th?

9 A Just the sample.

10 Q After -- Did you deliver the sample to the
11 agents on February 6th?

12 THE INTERPRETER: Beg your pardon?

13 Q On February 6th.

14 A I called them first.

15 Q Did you deliver the sample to them on February
16 6th?

17 A Yes.

18 Q Thereafter you returned to the apartment on
19 11th Street and 1st Avenue?

20 THE INTERPRETER: Do you mean after --

21 MR. ROSENFELD: After he delivered the sample.

22 A Yes.

23 Q And you told Mr. Wong that your buyer would
24 take an ounce the following day?

25 A Yes.

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2 Q And all your conversations were with Mr. Wong
3 is that correct?

4 A Not all the conversations with Mr. Wong only.

5 Q Mr. Yip, if your statement does not reflect
6 conversations with other people, would it be fair to assume
7 that those conversations did not exist?

8 A I don't understand your question.

9 THE COURT: Read back the question.

10 (Record read)

11 THE WITNESS: Yeah, you can put it that way.

12 Q Mr. Yip, on February 7th you arrived at the
13 apartment sometime in the afternoon on 11th Street and 1st
14 Avenue; is that correct?

15 A Yes.

16 Q Did you have \$2400 with you?

17 A Not when I first arrived.

18 Q At approximately two o'clock in the afternoon
19 were you in the apartment at 11th Street and 1st Avenue
20 with \$2400?

21 A Yes.

22 Q Is it true that you handed the \$2400 to
23 Lam Muk Chiu?

24 A Could be possible and could not be possible.

25 Q Referring to this time period in your testimony

1
2 earlier:

3 "What if anything occurred when you arrived
4 at the apartment?

5 "Answer: Lam Muk Chiu asked me, 'Have you
6 got the money?'

7 "I said, 'Yes.'

8 "I handed the money to Lam Muk Chiu."

9 Is that true?

10 A Quite possible.

11 Q Is it possible that you may have given the
12 \$2400 to David Wong?

13 A Quite possible.

14 Q We don't know which? Do you know which ver-
15 sion is true?

16 A I don't remember.

17 Q If your statement says, "I showed Wong the
18 \$2400. He counted it," would that be a correct statement?

19 MR. CLAYMAN: Will he continue that sentence
20 or is he permitted to pick and choose?

21 THE COURT: You can read the entire statement
22 to the jury.

23 MR. CLAYMAN: Thank you.

24 THE COURT: When we are finished.

25 Keep asking questions.

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2 He said if your statement said, what --

3 (Record read)

4 THE COURT: If he misrepresents what is in
5 the statement to the jury, they will find out.

6 MR. CLAYMAN: Thank you, your Honor.

7 THE INTERPRETER: What is the statement?

8 (Record read)

9 THE WITNESS: If that's what the statement
10 says, it would be correct.

11 Q And your testimony that you gave the money
12 to Lam -- that you gave the money to Lam -- would be
13 incorrect?

14 A It could be possible that I got mixed up.

15 Q The balance of your answer to the question,
16 "What if anything occurred when you arrived there?" and
17 continuing, it says, "I handed over the money to Lan Muk Chiu
18 He counted it. And then I took it back and I hold onto it."

19 Was that what happened after the money was
20 counted?

21 A Quite possible that's what took place.

22 Q Even though your statement says that David
23 Wong counted the money?

24 A Then that's what it says.

25 Q Now, did Mr. Lam hold onto the money or did

1
2 you take the money back?

3 A I took the money myself.

4 Q The statement says, referring to Mr. Wong,
5 "He counted it, handed it to Lam, L-a-m -- and said he
6 will be back with the heroin in fifteen minutes."

7 You did not state that you took back the
8 money. Will you please tell us which is correct?

9 A You mean just for him to count or for him to
10 hold onto?

11 Q You told us that your statement would be
12 correct, that Mr. Wong counted the money and that your
13 testimony before that Lam counted the money, is wrong.

14 Now, your testimony says that you took back
15 the money and held onto it. Your statement says that
16 Mr. Wong, after counting the money, gave it to Mr. L-a-m,
17 and that's all.

18 A If that's what the statement says, that it is.

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20 (Continued on the next page.)
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2 Q So you didn't take back the money as you
3 testified?

4 A If the statement says I didn't, then I didn't.

5 Q You don't remember.

6 A I am not clear.

7 Q Would it be fair to say that if you were --
8 Withdrawn.

9 Now, Mr. Yip, you stated in your testimony
10 that Mr. Wong wanted to go along and meet your buyer; is
11 that a true statement now

12 ?
13 THE INTERPRETER: It is about after he took
14 the ounce?

15 MR. ROSENFELD: Yes.

16 A Yes.

17 Q Now, your statement says that Mr. Wong said
18 that he wanted to ride with me for a few blocks and wait
19 now in a coffee shop.

20 Is that the same thing as meeting your buyer?

21 THE INTERPRETER: Is that what Mr. Wong said
22 to him?

23 MR. ROSENFELD I will withdraw it.

24 Q Your testimony indicated that Mr. Wong said
25 to you he wanted to go along and meet your buyer.

A Yes.

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2 Q Now, your statement says that "he wanted to
3 ride with me for a few blocks and wait for me in a coffee
4 shop."

5 Were you going to meet your buyer in a coffee
6 shop?

7 A No.

8 Q Now, which of your statements is correct,
9 the statement of February 8th or the testimony which you
10 gave in this court?

11 A If that is what the statement says, then the
12 statement is correct.

13 Q Would I be fair to say that your testimony
14 was false?

15 A I could have been vague.

16 MR. ROSENFELD: Your Honor, may we approach
17 the bench for a moment?

18 (The following occurred without the hearing
19 of the jury at side bar.)

20 MR. ROSENFELD: The last answer, the word
21 "vague," Mr. Chang advises me that the word can also
22 mean "wrong."

23 THE COURT: Do you want to ask him to repeat
24 the question?

25 Read back the question and ask it again.

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2 MR. ROSENFELD: The Chinese word that he
3 used --

4 THE COURT: I understand.

5 I ask the reporter to read the question and
6 read the answer to him, and then you may ask him
7 to explain the answer.

8 MR. CLAYMAN: How long are you going to go?

9 THE COURT: About five o'clock.

10 (The trial then proceeded within the hearing
11 of the jury.)

12 THE COURT: Mr. Karr, will you read back some
13 questions and then the last question.

14 (The reporter did as requested.)

15 THE INTERPRETER: He says, "which testimony?"
16 May I explain to him about yesterday?

17 MR. ROSENFELD: Yes.

18 THE COURT: Please read the last question
19 again.

20 (The reporter repeated the last question.)

21 A I am not trying to make a false statement;
22 I may not be clear about that.

23 Q When you obtained the one ounce of heroin,
24 was it Mr. Wong who gave it to you?

25 A Could be possible.

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Q Did Mr. Wong measure the heroin for you?

A Yes.

Q Was Mr. Wong alone with you?

A No.

Q Did Mr. Wong leave the apartment to obtain the heroin?

A Yes.

Q Did he leave alone?

A Yes.

Q Did you deliver the ounce of heroin to the agents?

A Yes.

Q And in the apartment was the defendant Mr. Lam Muk Chiu; is that correct?

MR. CLAYMAN: What time, your Honor?

MR. ROSENFELD: After he delivered the ounce of heroin to the agents on February 7th.

THE COURT: I am not clear at all what you are talking about. When he delivered, I assume the defendant and Chin Kin Man were not with the agents.

MR. ROSENFELD: I asked Mr. Yip when he returned to the apartment.

THE COURT: After making delivery to the agents?

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MR. ROSENFELD: Right.

THE COURT: That wasn't clear.

Rephrase your question.

MR. ROSENFELD: Excuse me.

THE INTERPRETER: I didn't get that, either.

BY MR. ROSENFELD:

Q Mr. Yip, after you delivered the heroin to the agents on February 7th did you return to the apartment on 11th Street with Mr. Wong?

A Yes.

Q When you went up to the apartment, was Mr. Lam in the apartment with Mr. Chin?

A Yes.

Q Do you remember who had the money, the \$2400, at that time?

A I am not clear on that.

Q Do you remember who divided the \$2400 amongst the people in the apartment?

A David Wong.

Q You are certain of that?

A Yes.

Q You are certain that Mr. Lam Muk Chiu did not count the money out to the people?

A Yes, I'm quite sure on that.

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2 Q In your testimony on January 9th:

3 "Question: Did anything else occur?

4 "Answer: We sat down. Lam Muk Chiu counted
5 the money out to us."

6 MR. CLAYMAN: Your Honor, may we approach
7 the bench on this?

8 THE COURT: Yes.

9 (The following occurred at side bar without
10 the hearing of the jury.)

11 THE COURT: Your objection is sustained as
12 to form.

13 When you read a question from the record,
14 you read it and say, "Did you make the following
15 answer to the following question?" You don't read
16 something unless it is a fact.

17 You have been long enough before juries to
18 know that. You make statements to the jury con-
19 stantly. You must not do that.

20 MR. ROSENFELD: I apologize to the Court.
21 Again I say I have refrained since you gave the
22 admonition.

23 THE COURT: You just did it again.

24 You ought to know how to ask a question.

25 MR. CLAYMAN: Your Honor, it says, "We sat

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2 down. Lam Muk Chiu counted the money."

3 Then, your Honor, the interpreter said
4 something, and it ends up:

5 "David Wong said, 'I'll give \$300 to Lam Muk
6 Chiu,' but it should be --

7 Well, that is a wrong name.

8 THE COURT: That is the reason for asking
9 the question: "Did you make the following response
10 to the following question?" Then you have to read
11 the full text, otherwise it is improper.

12 MR. ROSENFELD: Very well, your Honor.

13 MR. CLAYMAN: As far as the Lam Muk Chiu,
14 I think he said Chin Kin Man at the time, that is
15 the way I got it.

16 Now, I called down to the reporter because
17 I am certain he said that, and I think at the time
18 he was throwing out the names, throwing the names
19 around.

20 Now, we can confirm this with the stenographer,
21 but that is what I remember.

22 MR. ROSENFELD: I want to get to that point
23 next.

24 THE COURT: You can ask him. You can't put
25 it in terms of a statement. Read it.

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2 MR. ROSENFELD: I understand, your Honor.

3 (The trial then continued within the hearing
4 of the jury.)

5 THE COURT: You must understand when counsel
6 makes a statement it is not evidence. When he
7 purports to be reading from a record, it is not
8 evidence. It is your recollection which controls
9 as to what the testimony is which has been given
10 or which has not been given. It is your recollection
11 as to what was said which controls.

12 Now the last question was improperly asked,
13 and you are to disregard it.

14 (Continued on next page.)
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2 BY MR. ROSENFELD:

3 Q Mr. Yip, when David Wong divided up the money
4 did he keep the bulk of the funds?

5 A All I know is he gave \$300 to each person,
6 but I only got \$150.

7 Q You are certain that you got \$150, Mr. Yip?

8 A Yes.

9 Q Did Mr. Wong ever say he was going to give
10 you more than \$150?

11 A Yes.

12 Q How much did he say he was going to give you?

13 A The other \$150.

14 Q Now, you are certain of the \$300 figure?

15 A Yes.

16 Q In your statement you say:

17 "When Wong and I went into Apartment 15 I saw
18 Lam and Chin inside. Wong said he would give Lam,
19 Chin and me \$350 cash."

20 Now I ask you again, do you remember how much
21 was to be given to the people?

22 THE COURT: Which people?

23 MR. ROSENFELD: The three people.

24 A The \$350 seems to be the correct figure.

25 Q Would I be fair to say that your testimony

EK 4/2 pm

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2 relating to the \$300 is false?

3 A I could have made a mistake.

4 Q Was Mr. Wong in need of money, to the best of
5 your knowledge?

6 A He said he was hard up for money.

7 Q Now, after you and Lam Muk Chiu and Chin Kin
8 Man received your respective shares, did any of you offer
9 to give his share back to Mr. Wong?

10 A Chin Kin Man offered to let him have his share.

11 Q Mr. Yip, did you give the following answer
12 to the following question on January 9th in this court:

13 "Question: After Mr. Wong said this, did he
14 do anything?

15 "Answer: He distributed the money and Lam
16 Muk Chiu said to David Wong, 'If you are in need
17 of money, take my \$300 first.'"

18 THE INTERPRETER: Would you read that, please?

19 (The reporter repeated the question.)

20 A No, that is incorrect. He didn't say that.

21 Q Did Mr. Wong tell you when he was going to
22 give you the balance of the money?

23 A He said after a while. He said, "When you
24 need it, let me know."

25 Q Did he make reference to the proposed partner-

1
2 ship that we spoke about earlier?

3 A Yes.

4 Q And didn't Mr. Wong say to you that, "We are
5 going to be doing business together, you and Chin, and
6 that this money is very little compared to the business
7 that we will be doing later on"?

8 A Quite possible.

9 Q Lam Muk Chiu never said that to you, did he?

10 A Could be possible and could be not possible.

11 Q You are not certain about that any more, are
12 you?

13 A I would like to refer to my statement.

14 Q Mr. Yip, through February 7, 1974, all your
15 transactions and proposals, did they involve just you,
16 Chin and Wong?

17 A From February 4th to 7th?

18 Q Yes.

19 A No, that is incorrect.

20 Q Mr. Yip, would it be fair to say that your
21 statement shows no involvement between February 4th and
22 February 8th of the defendant Lam Muk Chiu?

23 That then in fact --

24 THE COURT: Wait a minute. He hasn't
25 answered.

1
2 MR. ROSENFELD: Excuse me.

3 At that time the concentration was on David
4 Wong, this is why most of the report was written on David
5 Wong.

6 Mr. Yip, between February 4th and February 12th
7 did Mr. Lam do anything more than take \$300 or \$350 from
8 David Wong?

9 The four of us were all in this together.

10 Your statement, Mr. Yip, do you recall saying
11 to us that there was a partnership proposed between you,
12 Chin Kin Man and David Wong?

13 MR. CLAYMAN: Objection, your Honor. It
14 wasn't the testimony of the witness.

15 THE COURT: I will allow it.

16 It is the jury's recollection as to what he
17 said that controls.

18 THE INTERPRETER: Would you read the question,
19 please.

20 THE COURT: Read back the question.

21 (Previous question read)

22 Not three people, it is four, four people.

23 At the time the agent said the concentration
24 is to be on David Wong, and Chin Kin Man. This is why we
25 didn't mention the other one.

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2 Q Mr. Yip, you were reporting accurately to
3 the agents what happened?

4 A Yes, it is accurate.

5 Q Do you think -- I will withdraw that.

6 THE COURT: We will suspend now, ladies
7 and gentlemen, until tomorrow morning at ten o'clock.

8 Reassemble tomorrow morning at ten o'clock.

9 Don't discuss the case during the course
10 of the evening.

11 Have a good evening.

12 (At 4:50 o'clock p.m. a recess was then
13 taken until Tuesday morning, January 14, 1975,
14 at 10:00 a.m.)

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16 ---

EK:jm
TlamRl

(At 10:15 a.m., the jury took its place in the jury box.)

THE COURT: Good morning.

You may proceed, Mr. Rosenfeld.

H A R R Y Y I P , called as a witness, having been previously duly sworn by the Clerk of the Court, took the witness stand and testified further as follows:

(All questions asked and all answers given were through the interpreter, Mrs. Laura Ho.)

CROSS-EXAMINATION

BY MR. ROSENFELD (continued):

Q Mr. Yip, I call your attention to February 13, 1974. On that date, did you visit David Wong at the 11th Street apartment?

A I saw David Wong, not just him alone, there were two others there.

Q Did you see David Wong at the 11th Street apartment; yes or no, please.

A Yes.

Q And at that time did David Wong offer to give you heroin?

A Yes.

Q And did David Wong tell you that he had a lot of heroin in San Francisco?

A Yes.

Yip-cross

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2 Q And did David Wong make any phone calls in
3 your presence?

4 A No.

5 Q Do you know of your own knowledge whether
6 David Wong made any calls to San Francisco on February 13th?

7 A I am not clear on that.

8 Q Did you see David Wong on February 14, 1974?

9 A No.

10 Q Is it not a fact, Mr. Yip, that on February 15th
11 you advised agents Fenrick and Jason that you had in fact
12 seen Mr. Wong on February 14th?

13 A It could have been possible that I had seen him
14 on the 14th.

15 Q Do you remember any date when you saw David
16 Wong in which he mentioned to you that his San Francisco
17 connection had left New York for San Francisco?

18 THE INTERPRETER: Please repeat the first part
19 of the question?

20 (The reporter repeated the question.)

21 A To the best of my recollection, he had mentioned
22 such a thing.

23 Q Did you meet Mr. Wong's San Francisco connection?

24 A No.

25 Q Did Mr. Wong ever tell you who the person was

Yip-cross

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2 regarding the San Francisco connection?

3 A No.

4 Q Did Mr. Wong tell you that the person who left
5 New York for San Francisco was able to arrange transfers of
6 pound quantities of heroin into New York?

7 A Could be possible he has said that.

8 Q Mr. Yip, on February 15th, did you see the
9 defendant, Lam Muk Chiu?

10 A Yes.

11 Q Is it your testimony that on February 15th you
12 gave Mr. Lam Muk Chiu your name and address as well as that
13 of your father?

14 A I gave it to him when he asked me for it.

15 Q Did you write the information down or did
16 Mr. Lam Muk Chiu write the information down?

17 A He said he doesn't know english so I wrote it
18 in his book for him in english.

19 Q Are you certain that occurred on February 15th?

20 A Yes.

21 Q Is it possible that it may have occurred on
22 February 7th?

23 A Not possible.

24 Q Mr. Yip, did you testify before a Grand Jury?

25 A Yes.

Yip-cross

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Q With reference to the defendant Lam Muk Chiu?

A Yes.

Q I would like to read to you a part of the questions and answers which were given by you and ask you now if they were true answers which you gave.

MR. ROSENFELD: May I approach the bench for a moment?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. ROSENFELD: In order to save time, we are talking about February 7th and the questions continue through February 7th, and the question was, "And did Lam Muk Chiu " --

THE COURT: Let me read it.

MR. CLAYMAN: There is a question shortly after which indicates it could be several days or that day, there is no testimony that it happened on February 7th.

THE COURT: I don't think that you can indicate that, that could be within five minutes to ten days after or two weeks.

MR. ROSENFELD: It refers to his telephone number and his father's number.

Yip-cross

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2 MR. CLAYMAN: He didn't say he didn't give
3 his father's name, I don't think there is any
4 discrepancy there and I object to the question.

5 THE COURT: You can try it, but you have to
6 bear in mind you have to read the whole thing back.

7 MR. ROSENFELD: Does the Court want me to
8 read it all?

9 MR. CLAYMAN: Absolutely.

10 THE COURT: You can do it anyway you wish, but
11 you have to bear in mind that he will read the whole
12 thing.

13 MR. ROSENFELD: All right.

14 (The trial then proceeded within the hearing
15 of the jury.)

16 BY MR. ROSENFELD:

17 Q The question is:

18 "Question: Now" --

19 THE COURT: Wait a minute, you know how to ask,
20 you must ask, "Were you asked this question and did
21 you give this answer."

22 Q Mr. Yip, I am going to read to you some
23 questions and answers, I would like to know whether you were
24 asked the questions and whether you gave the answers.

25 "Question: Now, I direct your attention to

Yip-cross

February 7th, 1974. Did the Drug Enforcement agent give you twenty-four hundred dollars with which to purchase heroin from these individuals?

"Answer: Yes.

"Question: Did you go to a meeting with Wong in Manhattan on that day?

"Answer: Yes."

THE COURT: Did you give that answer to that question?

THE INTERPRETER: May I have the question and answer?

THE COURT: Read the question to her and then ask him whether he gave that answer to that question.

MR. ROSENFELD: Do you want to read the question to her, Mr. Karr?

(At this point, the reporter then read the above questions and answers.)

THE COURT: Did you give those answers to those questions?

THE WITNESS: Yes.

BY MR. ROSENFELD:

Q "Question: Was Lam Muk Chiu with him?

"Answer: Yes."

Did you give that answer?

Yip-cross

A Yes.

Q "Did they give you" -- excuse me.

"Question: Did they give you twenty-eight spoons or one ounce of heroin?

"Answer: Yes, twenty-eight spoonfuls."

A To the best of my recollection, that occurred.

THE COURT: No, that isn't the question, the question is, did he give that answer to that question.

You have got to ask him that that way.

THE WITNESS: Yes, I have answered that way.

BY MR. ROSENFELD:

Q "Question: Did you give them twenty-four hundred dollars?

"Answer: Yes.

Did you give that answer to that question?

A Yes.

Q "Question: Did you then deliver the heroin to an agent of the Drug Enforcement Administration?

"Answer: Yes."

Did you give that answer to that question?

A Yes, I have answered that way.

Q "Question: After that you returned to an apartment located on East 11th Street?

"Answer: Yes."

Yip-cross

Did you give that answer to that question?

THE INTERPRETER: What is the question again,
I didn't get the first part.

(The reporter repeated the quoted question
and answer.)

A Yes.

Q "Question: Was Chin Kin Man, Lam Muk Chiu and
Hong Han Can there when you returned?

"Answer: Yes."

Did you give that answer to that question?

MR. CLAYMAN: I believe there is a mistake in
the name.

THE COURT: Wong Han Kan, the last name is
Wong Han Kan.

A It seems that David Wong and I were together.

MR. CLAYMAN: Your Honor, may we approach the
bench?

THE COURT: Yes.

(The following occurred without the hearing
of the jury.)

MR. CLAYMAN: The problem, I think, is that
there is a mistype in the Grand Jury minutes, it
should be Wong Han Kan.

THE COURT: That is what I said to him.

Yip-cross

She is just repeating it.

All right.

(The trial then proceeded within the hearing
of the jury.)

(continued on next page)

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follows

(The Reporter then repeated the quoted question and answer.)

A I could have made a mistake on that answer because I was with Wong that day.

Q "Question: Did he receive anything, Lam Mok Chiu and Kin Chin Man, receive anything from David Wong?

"Answer: Yes, he gave them \$300."

Did you give that answer to that question?

THE INTERPRETER: I need to have that question repeated again.

(The Reporter repeated the quoted question and answer.)

A Yes.

Q "Question: Shortly after that, did you continue to have a discussion with Mr. Wong Han Kon and Mr. Lam Muk Chiu with reference to the purchase of heroin?

"Answer: Yes."

Did you give that answer to that question?

A Yes.

Q Now, Mr. Yip, was that on February 7th?

A What on February 7th?

Q The last question refers to a discussion you had

Yip-cross

with Mr. Wong and Mr. Lam Muk Chiu, did that discussion occur on February 7th?

A Yes.

Q "Question: Did they tell you that they could supply you with whatever heroin you needed?

"Answer: Yes."

Did you give that answer to that question?

A Yes.

Q "Question: What was that?

"Answer: He asked me for my telephone number and my address."

Did you give that answer to that question?

MR. CLAYMAN: I think you must have skipped a question and answer.

MR. ROSENFELD: No.

THE COURT: He can ask it. You can clarify it on redirect.

Please give the question and the answer.

(The Reporter repeated the quoted question and answer.)

A Yes, I have given that answer.

Q And that was done on February 7th; is that correct, Mr. Yip?

A When I gave him the address it was February 15.

Yip-cross

Q Did you tell the grand jury that you gave Mr. Lam your telephone number and address on February 7th?

MR. CLAYMAN: Your Honor, objection, he has asked questions and given the answers and there has not been that question.

THE COURT: No, he can ask that question. He told the grand jury that he gave it to him on February 7th.

A I could have given that answer to the grand jury that way. I could have been mixed up a little bit.

Q Thank you, Mr. Yip.

Mr. Yip, the statements which we looked at yesterday and your grand jury testimony which we looked at today, which one would be more accurate in your recollection?

MR. CLAYMAN: Objection, your Honor.

THE COURT: Yes, sustained in that form.

MR. CLAYMAN: Yes.

Q Mr. Yip, you told the grand jury that Mr. Wong gave \$300 to Mr. Lam Muk Chiu and Chin Kin Man; was that a correct statement?

A At the time when I was giving the testimony that was to the best of my recollection, I thought that was the correct number. Later on when I had a chance to check over the records I realized that it was 350.

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Q When did you check over the records?

A Before I came to court.

Q When you were in court, didn't you tell the jury that you received \$300 and not \$350?

MR. CLAYMAN: Objection, there is no testimony of the witness which --

THE COURT: Well, one time I think he said 300 and yesterday, as I recall, I think he said 350.

Now it is up to the jury to recollect.

THE INTERPRETER: What was the question?

MR. ROSENFELD: Would you read back the question?

THE COURT: I don't think he ever said that exactly. There was some question about whether they had received 300 or 350.

MR. ROSENFELD: That is correct.

THE COURT: You said, "That you received."

MR. ROSENFELD: Excuse me.

Q Was it your testimony that Mr. Lam Muk Chit and Mr. Chin Kin Man received \$300 from Mr. Wong?

MR. CLAYMAN: Your Honor, we have been over this time and time again.

THE COURT: No, I will let him cross-examine on it. I don't know where he is going but I think he should answer it.

1 MR. CLAYMAN: Thank you, your Honor.

2 A Yes, I have made that statement.

3 Q And that statement was incorrect?

4 A Yes, I was mixed up on the figure.

5 Q Mr. Yip, on February 16th, did you drive
6 Mr. Lam Muk Chiu to the airport at Kennedy International
7 Airport?

8 A Yes.

9 Q And did he leave the country, to the best of
10 your knowledge, on February 16th?

11 A Yes.

12 Q On February 17th did you drive David Wong to the
13 airport?

14 A Yes.

15 Q Are you sure that was on February 17th and not
16 February 18th?

17 A To the best of my ability to recall, it was
18 February 17th.

19 Q Is it possible that it could have been
20 February 18th?

21 MR. CLAYMAN: Objection, your Honor, as to the
22 form, anything is possible.

23 THE COURT: No, I will allow it.

24 A The best I can recall is February 17th.
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2 Q Before Mr. Wong left on February 17th, did he
3 have any additional conversations with you pertaining to his
4 San Francisco connections?

5 A No, he did not discuss with me any more.

6 Q Did you ever advise Agent Jason that Mr. Wong
7 stated to you that he was having difficulties with his San
8 Francisco heroin connection and there would be a delay in
9 shipping the heroin to New York?

10 A Yes, I had told that to Agent Jason.

11 Q And did you advise Agent Jason that Wong told
12 you that he did not want to have delay and therefore he was
13 returning to Hong Kong to arrange for a more immediate
14 shipment to New York of heroin.

15 A Yes.

16 Q And didn't Mr. Wong advise you that he in fact
17 was shipping heroin to you?

18 A Yes.

19 Q Mr. Yip, did you ever -- withdrawn.

20 While Mr. Lam Muk Chiu was in New York, did you
21 ever have any telephone conversations with him?

22 A No.

23 Q Is it true that the only way you identified
24 the voice on the telephone when you started to receive phone
25 calls from someone in Hong Kong was because the person on

1
2 the other end of the phone said, "I am Lam Muk Chiu"?

3 A I have had conversations with him here. I
4 recognize his voice on the phone.

5 Q Do you know what time of day Mr. Lam Muk Chiu
6 left New York on February 16th?

7 A It's 10:45 or 11:00 o'clock in the morning.

8 MR. ROSENFELD: May I have Exhibit 5, please?

9 MR. CLAYMAN: What is Exhibit 5?

10 MR. ROSENFELD: A letter.

11 (Document handed to Mr. Rosenfeld.)

12 BY MR. ROSENFELD:

13 Q Mr. Yip, did anyone who was connected with the
14 heroin transactions which you have told about leave New York
15 on February 18th?

16 A That is not possible.

17 Q I would like you to take a look at this letter
18 marked in evidence as Government's Exhibit 5.

19 A What is the purpose of this letter?

20 Q Will you take a look at it, please?

21 Will you read it?

22 THE INTERPRETER: He asked me to translate.

23 "When we parted, after we had parted I arrived
24 in Hong Kong safely on the 18th" --

25 MR. ROSENFELD: Can we please -- I would like

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2 the witness to read it. I didn't ask to have it
3 translated, your Honor.

4 MR. CLAYMAN: The letter is in evidence, your
5 Honor.

6 THE COURT: You actually asked him about the
7 18th and whether anybody left New York on the 18th,
8 and he said, "No."

9 BY MR. ROSENFELD:

10 Q To the best of your recollection, after looking
11 at this letter, no one left New York on February 18th?

12 A No.

13 Q Mr. Yip, is your wife a Caucasian?

14 THE INTERPRETER: He thinks the question is
15 irrelevant, could he not answer it?

16 THE COURT: You must answer it.

17 I don't see anything wrong with it.

18 A No, my wife is not Caucasian.

19 Q Is your wife Chinese?

20 A Yes.

21 Q Did Mr. Lam Muk Chiu ever meet your wife?

22 A No.

23 Q Mr. Yip, what is Chou Waw?

24 A What is what?

25 Q Chou Waw, C-h-o-u W-a-w.

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2 THE INTERPRETER: Waw, W-a-w?

3 MR. ROSENFELD: Yes.

4 A I don't know what it is.

5 MR. CLAYMAN: Your Honor, may I --

6 THE COURT: The answer is "I don't know what it
7 is."

8 MR. ROSENFELD: May I have one moment, your
9 Honor, to get the translation?

10 (Mr. Clayman handed Mr. Rosenfeld a document.)

11 MR. ROSENFELD: Thank you.

12 (Mr. Rosenfeld then returned the document.)

13 Q Did you ever, Mr. Yip, did you ever receive any
14 letters from Mr. Lam's wife?

15 A I have never received it directly but Chin Kin
16 Man has.

17 Q Did you have any conversations other than those
18 which you have testified to with a person known as -- well,
19 a person whom you have identified as Mrs. Lam Muk Chiu?

20 THE INTERPRETER: Can you please read the
21 question to me?

22 (Reporter repeated the question.)

23 A Yes, on the telephone.

24
25 (continued next page)

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2 Q And that was other than the conversation which
3 you had previously testified about?

4 THE COURT: The initial question, Mr. Rosenfeld,
5 was, did he have any conversation with Mrs. Lam Muk
6 Chiu, other than the ones he has already testified to?

7 I don't think he understands that question,
8 you had better repeat it to him.

9 (The Reporter repeated the question.)

10 A No.

11 Q Do you know Tin Tseis?

12 THE REPORTER: Spell it, please.

13 MR. ROSENFELD: Tin-Tseis.

14 A Yes, I do.

15 Q Who is Tin Tseis?

16 A That is Chin Kin Man.

17 Q And is it your testimony that the person whom
18 you have identified as Mrs. Lam Muk Chiu was writing letters
19 to Chin Kin Man?

20 MR. CLAYMAN: Objection, it wasn't his testimony.

21 MR. ROSENFELD: I am not asking whether it was,
22 I am asking whether it is.

23 THE COURT: The question is, is that his
24 testimony, not whether he has given any such testimony.
25 Is it your testimony?

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2 MR. CLAYMAN: May the question be repeated?

3 (The Reporter repeated the question.)

4 A That was not my testimony, I said Chin Kin Man
5 received a letter from her.

6 Q Do you know when Chin Kin Man received a letter
7 from Lee Pui Kwan, from the person whom you have identified
8 as Mrs. Lam Mkk Chiu?

9 THE INTERPRETER: Would you repeat that,
10 please?

11 (The previous question was read.)

12 A I don't know the date.

13 Q Was it while Lam Muk Chiu was in the United
14 States?

15 A No.

16 Q Was it after he had left the United States?

17 A Yes.

18 Q Do you know how soon after Lam Muk Chiu left
19 the United States that the letter came to Chin Kin Man?

20 A About a week.

21 Q And was the letter addressed to Chin Kin Man?

22 A No.

23 Q Did Chin Kin Man open the letter?

24 A He did.

25 Q Mr. Yip, in August -- when you knew for certain

1
2 that Lam Muk Chiu was coming to the United States, did you
3 reserve the hotel room at the International Hotel?

4 A Yes, I went with the agents.

5 Q When you were at the hotel room with the agents,
6 was there a tape recording device placed in the hotel room?

7 A Yes.

8 MR. ROSENFELD: I have no other questions of
9 the witness, your Honor.

10 MR. CLAYMAN: I have a few questions on
11 redirect.

12 REDIRECT EXAMINATION

13 BY MR. CLAYMAN:

14 Q Mr. Yip, directing your attention to and
15 forgetting -- I am sorry -- directing your attention to
16 Defendant's Exhibit B in evidence, would you look at it and
17 tell me what day it was written?

18 A The date is February 19, 1974.

19 Q Mr. Yip, does this two page, four paragraph
20 statement, include everything that occurred between you and
21 Mr. David Wong, Mr. Lam Muk Chiu, and Mr. Chin Kin Man on the
22 dates from February 4 through February 15?

23 MR. ROSENTHAL: Objection, your Honor, the
24 document speaks for itself, it is in evidence.

25 THE COURT: That may well be, but he does have

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Yip-direct/Clayman

Kuan, who is it addressed to in the United States?

A For Peter Ling, care of the 11th Street address.

MR. CLAYMAN: No further questions of this witness.

MR. ROSENFELD: I have a couple of questions.

RE CROSS-EXAMINATION

BY MR. ROSENFELD:

MR. ROSENFELD: Is it possible to have part of the initial testimony of the redirect read back for a moment.

THE COURT: I don't think so. Not at this point.

MR. ROSENFELD: Your Honor, may I have a moment.

MR. CLAYMAN: Do you want to approach the side bar?

(The following took place at the side bar.)

MR. ROSENFELD: Your Honor, the statement on

2A --

MR. CLAYMAN: The statement is signed Harry Wok Yip.

THE COURT: You can ask him what date. You don't need a side bar.

(End of side bar.)

Q Mr. Yip, on the statement you were just asked

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2 about the previous two dates. I show you the document. And
3 there is a date over here that says 2/8/74. There is another
4 date at the end of the statement, 2/19/74. Now, the date,
5 if you look at the statement -- the first question, do you
6 remember what date you gave the statement?

7 A I wrote to them everyday and --

8 MR. ROSENFELD: I move to strike the answer
9 as being non-responsive.

10 MR. CLAYMAN: I object. It is responsive.

11 THE COURT: Can you recall what date you gave
12 that written statement.

13 The trouble is your question is -- you said,
14 do you recall on what date you gave the statement.

15 Do you recall on what date you prepared and
16 signed that statement.

17 THE INTERPRETER: He said February 19th.

18 THE COURT: All right.

19 Q Now, Mr. Yip, is this statement -- does it
20 cover any activity -- after this written statement, does it
21 cover any activities after February 8th?

22 MR. CLAYMAN: Your Honor, I would object to
23 this on Mr. Rosenfeld's objection. The statement that
24 he is referring to speaks for itself.

25 THE COURT: No. He can ask that question.

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2 THE INTERPRETER: This statement as to activities
3 as to February 8th?

4 MR. ROSENFELD: Yes.

5 THE WITNESS: This contains events between
6 February 4th and the 8th.

7 Q Now, Mr. Yip, the statement says, "I make this
8 statement to Agents Jason Fenridge on 2/8/74."

9 Is that true or false?

10 A Yes. True.

11 Q Then you did not make this written statement on
12 February 19th?

13 A Mr. Yip, you did not tell the agents about
14 Mr. Lam. Is it because they told you to look after Mr. Wong?

15 MR. CLAYMAN: Objection, your Honor. It is
16 a double question, number one. And number two, it
17 assumes something not in evidence.

18 THE COURT: Yes. I will sustain it as to form.

19 MR. CLAYMAN: Thank you.

20 MR. ROSENFELD: I have no other questions,
21 your Honor.

22 MR. CLAYMAN: No re-redirect.

23 THE COURT: All right, you are excused, Mr. Yip.
24 (Witness excused.)

25 MR. CLAYMAN: Can we take our morning recess now.

Fenrich-direct

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4/2amJBmm2 DIRECT EXAMINATION

BY MR. CLAYMAN:

MR. CLAYMAN: I ask if this small blue book
be marked for identification.

THE CLERK: As Government Exhibit 75.

THE COURT: Part of that search you found
Exhibit 74; is that correct?

THE WITNESS: That's correct.

THE CLERK: Small book.

BY MR. CLAYMAN:

Q I show you Government Exhibit number 75. Do
you recognize that?

THE COURT: Just yes or no.

THE WITNESS: Yes, I do.

THE COURT: Show it to Mr. Rosenfeld.

MR. CLAYMAN: Yes.

MR. ROSENFELD: Voir dire for a moment, your
Honor?

VOIR DIRE EXAMINATION

BY MR. ROSENFELD:

Q Did you find this on the person of the defen-
dant?

A No, I did not.

MR. ROSENFELD: I object to the introduction

Fenrich-Voir Dire

of this document.

THE COURT: Where did you find it?

THE WITNESS: It was in his attache case which he had next to him at the time of his arrest.

BY MR. ROSENFELD:

Q Did you have a warrant to search?

A No, I did not. I had an arrest warrant.

Q The arrest warrant was for the person of the defendant.

A The arrest warrant was for Lam Muk Chiu.

MR. ROSENFELD: I object to the introduction. It was not found on the person.

THE COURT: Let me see.

(End of voir dire.)

(The following took place at the sidebar.)

MR. CLAYMAN: There is more in the back.

(End of sidebar.)

THE COURT: Ladies and gentlemen, we will take a five minute recess. Don't discuss the case.

(Whereupon, the Jury retired from the courtroom.)

(The following took place at sidebar.)

THE COURT: My recollection, Mr. Rosenfeld, is that if an officer has an arrest warrant and he makes an arrest pursuant to the arrest warrant, that anything

3 1 on the premises or within his immediate area of
2 where he is is admissible.

3 MR. ROSENFELD: If it open to view.

4 THE COURT: No.

5 MR. ROSENFELD: If it could be determined to
6 be a dangerous instrument --

7 THE COURT: I am assuming --

8 (End of sidebar.)

9 THE COURT: (Addressing witness) Don't go
10 away.

11 THE WITNESS: No.

12 (The following took place at the sidebar.)

13 THE COURT: I am assuming he seized the whole
14 briefcase.

15 MR. CLAYMAN: Indeed, this man was a suspected
16 narcotic smuggler. First of all, they had to go through
17 this to inventory it because they were going to return
18 to -- return the defendant to West Street. It was
19 right next to a suspected narcotics violater. And they
20 found the address listing --

21 MR. ROSENFELD: I don't think you should say
22 that.

23 THE COURT: There is no jury here.

24 MR. CLAYMAN: The address of Mr. Lam Muk Chiu.
25 15 Ludlow Street. Lee Pui Kwan was written in English.

Fenrich

And 1519 Rockaway Parkway. Harry Yip was certainly -- this is evidence of the commission of a crime.

THE COURT: Yes. In the light of the fact that he said he wrote -- Yip said he wrote the address in English.

MR. CLAYMAN: Twice.

MR. ROSENFELD: Harry Yip said that Harry Yip wrote Harry Yip's address and could be --

MR. CLAYMAN: There are two writings. It is for the Jury to tell which wrote which one.

THE COURT: It has Harry Yip's address.

MR. ROSENFELD: This may be true. But if there was no warrant to search articles belonging to the defendant -- the fact that it may be proof of a crime --

THE COURT: Do you have some cases that show you can't --

MR. ROSENFELD: In addition --

THE COURT: Do you have some case? My recollection of the case is, which may be faulty, is that you may search when you make an arrest at the time of the commission of a crime. It is right in the center with the commission of a crime. And you have a warrant for the arrest, you may search the defendant and anything in his immediate vicinity. Anything that

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shows up by way of evidence in connection with the crime is admissible. And you may go and search the premises as such.

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But he didn't. He searched -- the man with his bag --

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MR. ROSENFELD: The bag wasn't attached to him. The bag was on the side. It wasn't something in the immediate view of the -- the defendant's view.

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THE COURT: Let's get the agent on the stand and ask him.

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MR. ROSENFELD: May I go one step further?

13

THE COURT: Let's lay the foundation.

14

MR. ROSENFELD: The basis for the arrest warrant being issued and the agent being in that room was on the basis of information given by a confidential informant whose reliability was not proven, and which you did not allow me to delve into before.

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I think all of this combined --

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THE COURT: The reliability of the informant with all those tape recordings?

21

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(End of sidebar.)

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THE COURT: All right, lay the foundation.

24

Wait a minute. The defendant is not in the courtroom.

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(Whereupon, the defendant entered the courtroom.)

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THE COURT: I might note for the record that if the defendant had any intention of suppressing this material, he should have brought a motion to suppress, a motion to suppress prior to this time.

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And this is not the proper time to have a suppression hearing. However, in the light of the circumstances I will take this much of a suppression hearing. But I am not necessarily saying that the defendant hadn't waived his right to make such a motion.

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MR. CLAYMAN: And I would want to put on the record that defense counsel was notified of the fact that these exhibits would be offered in evidence.

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MR. ROSENFELD: And I would ask that the record --

THE COURT: All right, go ahead.

Excuse me. Sit down.

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MR. ROSENFELD: I would add to the record, that on a number of occasions when I came up to the U. S. Attorney's office for certain information, it was unavailable at such times and necessitated return trips, and some of which interfered with other trials that I was actively involved in.

THE COURT: The fact of the matter is that you

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2 Q Would you give the name and the background
3 of how you obtained that name?

4 A I am sorry, sir.

5 Q In a report would you include a name together
6 with the background of how you obtained that name?

7 A If I were writing the report, yes.

8 Q And you would only write up the report about
9 something that was important?

10 A Generally, yes.

11 Q Is it true that the confidential informant
12 Harry Yio told you that David Wong had in the past mailed
13 heroin into the United States?

14 A I don't recall that offhand, sir, no.

15 Q Agent Fenrich, from the time of the defendant's
16 arrest you were present at the hotel room, the International
17 at Kennedy Airport; isn't that correct?

18 A At the time of arrest, yes, sir.

19 Q Were you in the room prior to the arrest?

20 A Yes, sir, I was.

21 Q Do you know whether there was a tape recorder
22 in the room?

23 A Yes, sir, I do.

24 Q Was there a tape recorder in the room?

25 A Yes, sir.

Q Was there a tape in the tape recorder, if you know?

A To the best of my knowledge yes, sir, there was.

Q And was that tape recorder placed in the room prior to the arrival of Lam Muk Chiu on August 9th, 1974?

A Yes, sir, it was.

Q Now, you have told us, Agent Penrich, about items which you seized from the defendant at the time of his arrest?

A Yes, sir.

Q Is that correct?

Did you seize a driver's license from the defendant?

A Yes, sir, international driver's permit, I believe.

Q Did you seize a pen from the defendant?

A Did I seize it? No, sir, it was put in his personal property.

Q Well, was it initially seized from the defendant?

A All personal property is taken from a defendant at the time of his arrest.

Q And was the pen which was taken from the

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1 THE COURT: Which one is it for the February
2 trip?

3 MR. CLAYMAN: May I? This indicates entry
4 on January 8, 1974, exit February 17, 1974.

5 THE COURT: From where?

6 MR. CLAYMAN: The ultimate departure place
7 would be the departure record, Honolulu, Hawaii.

8 THE COURT: But from where did he depart?

9 MR. CLAYMAN: Honolulu, Hawaii.

10 THE COURT: All right, it's admitted.

11 MR. CLAYMAN: Thank you, your Honor.

12 THE CLERK: Government's exhibit 80 received
13 in evidence.

14 THE COURT: I want to know; are you finished
15 now?

16 MR. CLAYMAN: At the very most, I'll have
17 a witness for five minutes after lunch, your
18 Honor, at the very most.

19 THE COURT: Why do you want one more?

20 MR. CLAYMAN: Well, perhaps this is a good
21 time to bring it up. The Government proposes
22 calling a witness with regard to voice identifica-
23 tion on the tapes. The witness would be an
24 individual, Mrs. Ho, who has heard the tapes and
25 who has heard the defendant's voice. She would

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1 testify that in her opinion, the voice on the tapes
2 is the voice of the defendant Lam Muk Chiu. That
3 would be the last witness the Government would
4 produce.

5 THE COURT: All right.

6 MR. ROSENFELD: I would strongly object to
7 the introduction of Mrs. Ho, Judge. Mrs. Ho is a
8 Government interpreter, she's been working with the
9 defense as well, from time to time. We feel that
10 it would be grossly unfair for the Government to use
11 Mrs. Ho as a witness in this case. It would be
12 extreme bias and prejudice.

13 The Government has had plenty of opportunity
14 to obtain other voice --

15 THE COURT: Is this pursuant to voice exemplars
16 or pursuant to familiarity --

17 MR. CLAYMAN: Familiarity with the voice, your
18 Honor.

19 THE COURT: I don't know about that.

20 MR. CLAYMAN: Is it because of Mrs. Ho's
21 position, or --

22 THE COURT: Yes, her dual position.

23 MR. CLAYMAN: Well, the Government would
24 argue that defendant has no right to keep from
25 giving to the Government a voice exemplar. It is

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1 non-testimonial. The fact that Mrs. Ho heard his
2 voice and will only testify to the knowing of the
3 voice and to knowing that he may have said that
4 is proper. It's certainly proper for an individual
5 to testify that they know the voice.

6 THE COURT: She obtained information, though,
7 while she was working for the defendant. For her
8 to now get on the witness stand when she has that
9 information --

10 MR. CLAYMAN: Well, it's non-testimonial.

11 THE COURT: She might have formed a prior
12 opinion. I suppose there is nothing confidential
13 about the exemplar or the tone of the voice
14 itself.

15 MR. ROSENFELD: Your Honor, but the information
16 and knowledge comes from a relationship which has
17 been assumed to be totally confidential.

18 THE COURT: Yes, but there is nothing
19 confidential about the tone of the voice itself.
20 It's what may have been imparted to her that's
21 certainly confidential. But the tone of the voice
22 itself is like a handwriting exemplar or any kind
23 of a voice exemplar. And as long as it's not
24 tainted in any way --

25 MR. ROSENFELD: Judge, I think the

1 Government has had ample opportunity to have voice
2 experts.

3 THE COURT: This might be even better than an
4 exemplar because an exemplar can be faked.

5 MR. ROSENFELD: It could have been obtained,
6 though, by positive identification of the defendant
7 at Kennedy Airport. He testified there was a tape
8 recorder there, there was tape in the machine.

9 MR. CLAYMAN: We also heard testimony that
10 the tape wasn't turned on.

11 MR. ROSENFELD: We also have an understanding
12 that the Government decided not to turn it on, for
13 whatever reason it may be. That was an opportunity
14 for the Government to have positive voice
15 identification.

16 They elected not to have it.

17 THE COURT: They have a positive voice
18 identification?

19 MR. ROSENFELD: They have the tapes from
20 Hong Kong only.

21 THE COURT: They have Mr. Yip's positive
22 identification.

23 MR. CLAYMAN: But the defendant has asserted
24 this is not the defendant, he has asserted it
25 several times before the jury.

1 MR. ROSENFELD: I think to have Mrs. Ho
2 testify is totally irresponsible on the part of the
3 Government at this point, your Honor. It comes as
4 a total surprise.

5 MR. CLAYMAN: I would take issue with
6 responsibility or surprise.

7 THE COURT: I don't see that. If there was
8 anything confidential about the tone of the voice
9 itself, there is no question but anything that was
10 said between them I would agree she couldn't say.

11 But from the tone of the voice and the
12 handwriting as such, as I understand it, there is
13 nothing confidential about it. There is no privilege
14 which protects it. And you can take --

15 MR. ROSENFELD: Judge, I remember going to
16 the point of saying why was Mrs. Ho present with
17 the defendant. She was present with the defendant
18 at defense counsel's request.

19 THE COURT: It may well be, but the fact
20 of the matter is, she could be taken before the
21 Grand Jury, and indeed, the defendant, himself
22 could be taken before the Grand Jury and forced to
23 give exemplars, under the cases, I understand. There
24 is no Fifth Amendment privilege that protects either
25 voice exemplars or handwriting exemplars. How is

1 this different?

2 MR. CLAYMAN: According to U.S. against
3 Dionisio, 410 U.S. 1, November, 1973, the opinion
4 states that "one's voice and handwriting are, of
5 course, means of communication. We held that a
6 handwriting exemplar, in contrast to the content of
7 what is written, like the voice or body itself, is
8 an identifying physical characteristic outside the
9 protection of the Fifth Amendment."

10 MR. ROSENFELD: Sir, I'm not arguing to the
11 point of saying voice --

12 THE COURT: What do you --

13 MR. ROSENFELD: It's Mrs. Ho, Judge. I don't
14 think Mrs. Ho is the right person to testify as to
15 the voice exemplars.

16 THE COURT: Indeed, I think he could call you
17 to the witness stand, perhaps to testify, if you were
18 an expert in this field, and get you, as far as your
19 expertise on the voice identification --

20 MR. ROSENFELD: Your Honor, in any event,
21 this voice identification, these voice exemplars,
22 would be after the time of the defendant's arrest,
23 and I would think, under the memorandum submitted
24 by the Government with reference to exemplars to be
25 used for identification, subsequent to the time of

1 her arrest, it would be improper.

2 MR. CLAYMAN: Mr. Rosenfeld wants to cross
3 examine --

4 THE COURT: In one case we are talking about
5 self-serving documents, in the other we are talking
6 about natural conversations, and I think they are
7 two different things.

8 MR. ROSENFELD: I cannot object more
9 strenuously to having Mrs. Ho called as a witness
10 for the Government,

11 THE COURT: I'll consider it during the lunch
12 hour.

13 The other thing that does disturb me, is
14 are they self-serving declarations? Let's assume
15 we get by Mrs. Ho one way or the other, then as I
16 understand it, you have an expert you wish to put on,
17 and how are we going to overcome the self-serving
18 exemplar objection?

19 MR. ROSENFELD: The question in the
20 memorandum of law is whether I directed the witness
21 to do this handwriting.

22 MR. CLAYMAN: Well, most assuredly you did.

23 MR. ROSENFELD: There have been occasions that
24 I have not been present at any --

25 MR. CLAYMAN: Mr. Cudo (phonetic) was

1 present, and the defendant certainly knew what he
2 was doing it for. The defendant was brought to my
3 office with Mr. Rosenfeld there, specifically for
4 the purpose.

5 MR. ROSENFELD: There was one occasion when
6 the defendant met only with the handwriting expert
7 alone, at West Street, I believe the first time,
8 and gave an exemplar.

9 MR. CLAYMAN: Well, certainly the meeting
10 with the handwriting expert at West Street even
11 goes beyond counsel's direction. The defendant
12 cannot but exactly know what the purpose is. And
13 it is clear --

14 THE COURT: How do you get around the self-
15 serving objection? It seems to me that they are
16 all self-serving.

17 MR. ROSENFELD: Your Honor, in that event
18 I would ask at the conclusion of the Government's
19 case a continuance to have additional time to
20 prepare and examine other documents, which perhaps
21 haven't been submitted at this time, for handwriting
22 analysis.

23 THE COURT: What documents?

24 MR. ROSENFELD: A number of letters, together
25 with the checks.

1 THE COURT: You have them?

2 MR. ROSENFELD: I had the checks, your Honor.

3 THE COURT: How do you ask for a continuance
4 when you have had a continuance for the last three
5 months to have this examination made? I can tell
6 you the date on which I gave you the authorization
7 to go hire the expert and -- I mean at what point --

8 MR. ROSENFELD: October 29, Judge.

9 THE COURT: What?

10 MR. ROSENFELD: October 29th.

11 THE COURT: I know, but how can you ask for a
12 continuance now, in the middle of a trial, to have
13 further work done on all these lines, when you are
14 just about to go into your case? I don't follow that.

15 MR. ROSENFELD: Judge, it was my understanding
16 prior to today, prior to a few moments ago, that
17 Laura Ho was not going to be a witness in this
18 case.

19 THE COURT: October 23rd.

20 MR. ROSENFELD: We have the 29th, Judge.

21 THE COURT: October 23rd, 1974 at 10 A.M. I
22 authorized defendants to engage handwriting experts
23 pursuant to 18 U.S.C. section 3001(a).

24 MR. ROSENFELD: I have October 29th.

25 Your Honor, the knowledge right now that

1 Mrs. Ho is going to testify comes as a great shock
2 and surprise to the defense. It was my understand-
3 ing that Mrs. Ho was not going to testify in this
4 case.

5 THE COURT: I haven't ruled that she is
6 going to testify. I'm more concerned about your
7 handwriting expert. What are we going to do with
8 respect to her? She is sitting here in this
9 courtroom, and if the only standards she has are the
10 self-serving exemplars, what are we going to do
11 about it?

12 MR. ROSENFELD: May I have one moment,
13 please, your Honor?

14 THE COURT: At least I assume she is sitting
15 here in this courtroom?

16 MR. CLAYMAN: Yes, she is, your Honor.

17 THE COURT: She nods her head, the unidentified
18 lady sitting in the rear.

19 I'll be frank with you, Mr. Clayman:

20 I'm troubled about the dual capacity here
21 and what confidential capacity there may exist
22 between Mrs. Ho and --

23 MR. CLAYMAN: I would understand that if
24 the Government had asked for Mrs. Ho to testify
25 as to anything she may have heard --

1 THE COURT: I understand that, but --

2 MR. CLAYMAN: (continuing) -- she -- but she
3 can testify to a description, what the man looked
4 like. Similarly, what he looked like is in the
5 case previously cited. It's the same as his voice
6 or his handwriting.

7 THE COURT: Can you take a defendant's counsel
8 and put him on the witness stand in the middle of a
9 trial and ask him what the defendant looked like on
10 the day he was first retained, for example, if the
11 defendant's appearance has since changed?

12 MR. CLAYMAN: But we are talking about the
13 interpreter --

14 THE COURT: That's what we're talking about.

15 MR. CLAYMAN: We are talking about just the
16 quality of the voice.

17 THE COURT: I know. Let's assume that Lam
18 Muk Chiu had, since his arrest in August, grown
19 a beard and a mustache and let his eyebrows grow
20 bushy, and he looked totally different.

21 And let's assume on the day after his arrest
22 that he looked the way he does now, and Mr. Rosenfeld
23 had been called in and there was a substantial
24 issue of identity, and you couldn't get anybody, for
25 some strange reason, we'll say, to testify as to

1 just the way he looked on the day he arrived in the
2 United States. Do you think you could put Mr.
3 Rosenfeld on the witness stand?

4 MR. CLAYMAN: Solely as to the question of
5 how the individual looked, yes, I do, your Honor.

6 MR. ROSENFELD: I refuse to answer. I'd
7 be found in contempt.

8 THE COURT: You refuse to answer that question?

9 MR. ROSENFELD: I'm just saying it as a little
10 aside, Judge.

11 THE COURT: There is certainly no communication,
12 there is no attorney-client privilege, and the sole
13 question would be whether -- I don't know. My
14 recollection of the cases on identity -- well, I'll
15 take a look.

16 What are you going to do about your --

17 MR. ROSENFELD: We are working during part of
18 the lunch hour, the recess, your Honor. So we may
19 come up with a practical solution --

20 THE COURT: It doesn't look like I'll have to
21 charge this jury this afternoon. So we'll have
22 summations this afternoon, unless you have more
23 witnesses, of which I'm not aware of.

24 MR. ROSENFELD: It depends what the Court
25 decides to do as far as Mrs. Ho. Quite frankly,

AFTERNOON SESSION

JB:jm
TlpmRl

(The following took place in the absence of the jury.)

THE COURT: Gentlemen, are you ready, Mr. Chang?

MR. CHANG: Yes, I am.

THE COURT: All right. I have considered the question of what to do about Mrs. Ho. And my feeling on it, Mr. Clayman, is this. On the United States against Wade, you may have a good basis for voice exemplar introduction of evidence. I am troubled, however, by the circumstances under which these exemplars arose, plus the fact that I am troubled about the double electronic device identification that would be in use here, namely, a tape of a telephone conversation. It being two electronic devices before Mrs. Ho.

MR. CLAYMAN: There is only one, your Honor.

THE COURT: Telephone --

MR. CLAYMAN: There is a tape of the telephone call.

THE COURT: There is a telephone and then there is a tape. There are two electronic devices.

MR. CLAYMAN: Well, if it please the Court --

THE COURT: And Mrs. Ho, as far as I know, has

1 never heard this witness either on the telephone or
2 on the tape or on the tape telephone. And the
3 combination of the two -- I am going to lean over
4 backwards in favor of the defendant and rule for --
5 at least for the purpose of this case, I am not
6 going to allow it.

7 MR. CLAYMAN: With regard to the tape and the
8 telephone, I think it's -- I think United States v
9 Torretello, Second Circuit case, and United States v
10 Rich, Second Circuit case, where the agents were
11 permitted to testify that the voice -- these were
12 agents working a wiretap. And in one case, it was an
13 agent who heard it from the tape of the wiretap. The
14 voice that they heard at another time was the same
15 voice that was being played over the tape recorder.

16 If Mrs. Ho can make the identification -- it
17 is subject to cross-examination by Mr. Rosenfeld.

18 THE COURT: I understand that. But I think
19 the circumstances under which this arose, arose
20 partly by reason of the fact that there is in issue --
21 we'll say there is a shortage of chinese interpreters.
22 The Government furnished Mrs. Ho to the defendant and
23 his attorney to act as a go-between between the two.
24 That is how she became familiar with the defendant's
25 voice. It was not by any means or any stretch of the

1 imagination any kind of a normal lineup or
2 exemplar situation. And the means by which it arose
3 gives me a lot of pause to allow it in the first
4 instance. And I think it's just -- I think it's just
5 inviting error to allow it.

6 MR. CLAYMAN: Well, I disagree, but --

7 THE COURT: Now we will take up the question
8 of Mr. Rosenfeld.

9 MR. ROSENFELD: Yes, your Honor.

10 THE COURT: Your expert. If it's appropriate
11 to do so.

12 Now, while we have the jury out -- I don't
13 know whether the Government is now resting or not.

14 MR. CLAYMAN: I just have one more document to
15 put into evidence and then the Government will rest.

16 MR. ROSENFELD: I think under the circum-
17 stances I don't mind discussing it.

18 THE COURT: Let's take it up while the jury is
19 still out.

20 MR. ROSENFELD: The exemplar that was given by
21 the defendant for the purpose of comparison, indeed,
22 and admittedly, were received after he was arrested
23 and after he was arraigned before this Court, and I
24 then -- we have the Government documents and as well
25 as the position stated by the Court, and I would

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1 perfectly agree that it would be essentially self-
2 serving to submit these exemplars for comparison in
3 that respect. I only regret that Mr. Clayman hadn't
4 advised me of this position prior to yesterday
5 afternoon at five o'clock. I advised him that since
6 that time I have been in touch with another person
7 who is capable of understanding chinese writing. I
8 do not know him. But I do know what his qualifica-
9 tions are as an expert other than he is a Government
10 interpreter. He's very familiar with the chinese
11 language throughout his years. And throughout the
12 course of this trial, which I am sure the Court has
13 noticed me talking to Mr. Chang -- we have been
14 examining various documents which contain allegedly
15 the defendant's handwriting -- and Mr. Chang stated
16 that he would not be willing to testify because he is
17 here as an interpreter and believes himself to be in
18 a neutral position and he couldn't testify. I find
19 it very unfortunate because from talking to him about
20 these documents he appeared to be extremely familiar
21 with the chinese language and the characters and
22 strokes and other details of identifying chinese
23 handwriting. He has given me the name of the
24 interpreter working at the immigration --

25 Where is it? At 220?

1 MR. CHANG: Immigration office.

5 2 MR. ROSENFELD: We have contacted him during
3 lunch. And that is when I approached your chambers
4 during the luncheon recess. I went to see
5 Mr. Clayman. He was out to lunch at the time. So
6 if we could make a request to the Court to have his
7 supervisor have him before the Court and give him
8 time to examine the documents --

9 THE COURT: Which documents? What are you
10 going to use as standards?

11 MR. ROSENFELD: I would use the standards --
12 the letters which have been submitted to the Court.

13 THE COURT: They are not the standards.

14 MR. ROSENFELD: Together with a letter which
15 is not yet in evidence, which was addressed -- or
16 addressed to a Peter Lam. It bears a Hong Kong post-
17 mark of February 12, 1974, at which time it is
18 admitted that the defendant was in the United States.

19 I think if the handwriting on that letter can
20 compare with the handwriting of a different --

21 THE COURT: Are you talking about the letter
22 to Chin Kin Man?

23 MR. CLAYMAN: Chin Kin Man from someone named--

24 MR. ROSENFELD: Named Peter Lam.

25 MR. CLAYMAN: It may have been Lee Pui Kuan.

1 The Government would object to a non-expert --

2 THE COURT: How is that a standard?

3 MR. ROSENFELD: The standard would come about
4 by saying that if the handwriting on that letter is
5 the same handwriting as on the other letter, and the
6 defendant -- then the defendant could not have
7 written those letters, because the first letter was
8 postmarked Hong Kong, February 12th.

9 THE COURT: How are you going to get that
10 letter in?

11 MR. ROSENFELD: That's the problem. I have to
12 see whether I could go along those lines first. I
13 think I should take the first hurdle first.

14 MR. CLAYMAN: This is an individual who never
15 testified as an expert. The mere fact --

16 THE COURT: Chinese characters -- that is a
17 question for the jury to determine. If you could get
18 the letter in before the jury and then have them make
19 their determination -- but how do you get the letter
20 in?

21 MR. CLAYMAN: A non-expert couldn't testify.

22 MR. ROSENFELD: Well, I could --

23 THE COURT: Assuming that he was the best
24 interpreter in the world, and even though he had
25 all the qualities of an interpreter, that does not

1 make him a handwriting expert any more than anyone on
2 the jury, or me or you or Mr. Clayman. A handwriting
3 expert is one who examines questioned documents.

4 And I see your lady friend in the back there.
5 You can ask her. She will confirm what I am about to
6 say. That doesn't mean an interpreter is a hand-
7 writing expert.

8 MR. ROSENFELD: We understand that. I believe
9 that Renee Martin has compared the documents that I
10 have just mentioned already and is willing to testify
11 to the -- as to her capacity as a handwriting expert.

12 THE COURT: How do you get it in?

13 MR. ROSENFELD: Well, I think I have to recall
14 Harry Yip first. I noticed he was still in court
15 today. And I will ask him if this is a letter that
16 he received from someone else. And the letter which
17 he made reference to in a conversation -- there is a
18 reference in one of the conversations which is already
19 in evidence about a letter which he had received in
20 some manner from Lan Muk Chiu's wife.

21 THE COURT: No. Chin Kin Man received.

22 MR. ROSENFELD: But he also said he turned
23 that letter over to the Government. He found it in
24 his car, I believe he said.

25 MR. CLAYMAN: He said he found it in the car.

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1 I believe there is no testimony of anyone who
2 received it, whether it was received, when it was
3 received and how it was received.

4 MR. ROSENFELD: If I ask him if this was the
5 letter he received --

6 THE COURT: He didn't receive it.

7 MR. ROSENFELD: -- (continuing) -- and which he
8 turned over to the Government.

9 THE COURT: How does that necessarily get to
10 be from Hong Kong?

11 MR. ROSENFELD: It has a postmark, Hong Kong,
12 February 12.

13 THE COURT: I think it's too farfetched.

14 MR. ROSENFELD: Judge, if I may refer --

15 THE COURT: Let me see the letter.

16 Is Miss Martin going to testify to this
17 handwriting here is the same handwriting as is
18 contained in all of the -- this hasn't even been
19 opened.

20 MR. CLAYMAN: I don't --

21 THE COURT: Is this the letter that was in it?

22 MR. CLAYMAN: This was something that Harry
23 Yin found in a car and turned over to the agents. I
24 think it was left at some -- it's just hearsay. What
25 I presume, it was left somewhere and someone picked it

1 up from somewhere.

2 THE COURT: It does have a Hong Kong postmark.

3 MR. CLAYMAN: Certainly no connection between
4 this letter and anyone in this case.

5 MR. ROSENFELD: If the Government's position
6 is that -- and the Court agrees with it, even the
7 handwriting on that letter could be the -- compared
8 to be the same handwriting as on the parcel which
9 contained the heroin.

10 THE COURT: Let's assume it was for the moment.
11 This is addressed to Peter Lam -- whoever this person
12 is -- and this person knows Peter Lam. And the
13 Government could equally argue that he had him write
14 the letter.

15 MR. ROSENFELD: The Government will argue that
16 Peter Lam is Lam Muk Chiu.

17 THE COURT: That's right.

18 MR. CLAYMAN: It shows the direct relationship
19 to the individual who knew Peter Lam.

20 THE COURT: I don't see how it's going to
21 help your case. Let's assume that you're in Hong Kong
22 and I am Peter Lam, and you write me this letter on
23 February 12th when I am here, and then I go back to
24 Hong Kong and I have -- I am dealing with Mr. Clayman.
25 And I say, look, Mr. Rosenfeld, you write the letter

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1 to Mr. Clayman or Mr. Yip in this country so that my
2 handwriting doesn't come into the picture.

3 MR. ROSENFELD: This is one argument that would
4 also apply to all the other letters that were written.

5 THE COURT: That's right.

6 MR. ROSENFELD: So what you are in fact arguing
7 is that the defendant never wrote any of the letters.

8 THE COURT: Not necessarily. How does it help
9 your case if I go back and say, you write the letter
10 to Mr. Yip. How does it help your case any?

11 MR. ROSENFELD: Well, it's a question of who's
12 involved in the conspiracy, if in fact there is a
13 conspiracy. Perhaps that is the correct issue that
14 we should attack.

15 THE COURT: Whether I go back and direct you
16 to write the letter to Mr. Yip or whether you write
17 them, whether I write them, is -- there is no
18 difference at all, is there? If I go back --

19 MR. ROSENFELD: No.

20 THE COURT: If I say, Mr. Rosenfeld, you write
21 the letter to protect my handwriting, or I write
22 these, there is no difference in culpability.

23 MR. ROSENFELD: That's correct.

24 THE COURT: It would only be if you -- it's
25 not only knowing who Mr. Clayman was back here, that

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1 he undertook to do this and wrote these letters, then
2 there might be some question. But I think it's
3 pretty far out, assuming that you are able to get it
4 in. Where is Mr. Yip now?

5 MR. CLAYMAN: He's no longer here. He was here.
6 He picked up the check and left. I don't know if he's
7 still in the State. The last time we talked to him
8 his indication was he wanted to absent himself for
9 his own safety.

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12 (continued on next page)

Barbella
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1 MR. ROSENFELD: I would request that such a
2 statement be stricken from the record.

3 THE COURT: There is no jury here.

4 MR. CLAYMAN: Another witness would probably
5 be Chin Kin Man. I understand he's back addicted
6 to heroin. I don't know what kind of a witness he
7 would make, even assuming he knew anything.

8 THE COURT: Where is he?

9 MR. CLAYMAN: He would be around somewhere.
10 He's pleaded guilty before your Honor.

11 THE COURT: Is he in jail?

12 MR. CLAYMAN: No, he isn't in jail. He was
13 supposed to be reporting to us, but hasn't done that
14 for a while. But even assuming he knows anything
15 about the letter, the Government would object to its
16 admission.

17 THE COURT: Assuming he was -- presumably
18 the person who received the letter was your client.
19 It is addressed to your client.

20 MR. ROSENFELD: No. To Peter Lam. We don't
21 know who Peter Lam is.

22 THE COURT: I see. Your client's name is Lam.

23 MR. ROSENFELD: Lam. That's the first name.
24 The last name is Muk Chiu.

25 THE COURT: Was he living at the 422 address?

1 MR. ROSENFELD: Someone was.

2 MR. CLAYMAN: Yes.

3 MR. ROSENFELD: David Wong was living there.

4 THE COURT: There's no burden on the
5 defendant to take the stand. But if anybody could
6 take the stand and say whether this was his
7 handwriting or not, it is your client.

8 MR. ROSENFELD: Yes, Judge.

9 THE COURT: And we are trying to -- you are
10 trying to get something into evidence. It is
11 addressed to your client. At least from all the
12 evidence before me right now. You're trying to do
13 that by some indirect means that are not available.

14 MR. ROSENFELD: Let me ask you a question.
15 I hate to sound a bit immature and unknowledgeable,
16 but if I put the defendant on the stand, you say --
17 and I say, "r. Defendant, did you do this, or is
18 this your handwriting, I am opening him up to
19 everything.

20 THE COURT: That's right.

21 MR. ROSENFELD: And I don't know -- I am
22 at the point -- at this point of the case I don't
23 know whether I am prepared to open him up to
24 everything, Judge. I was even considering --

25 THE COURT: That is a risk you take.

1 MR. ROSENFELD: I am considering putting him
2 on the stand to have him -- if I put him on the
3 stand to measure his neck size, and if I did that
4 I am still subject to everything?

5 MR. CLAYMAN: We are not going to string
6 him up.

7 MR. ROSENFELD: No. I will tell you quite
8 frankly, in one of the conversations he mentions
9 to Yip -- Yip mentions to him, my neck is 14 and a
10 half. And he said -- and the conversation just
11 before -- the line just before this, he says, your
12 neck is larger than mine.

13 Now, if this man has the same size or a
14 smaller neck, maybe it's not the same man. I don't
15 know. That is my obligation. That is an issue that
16 -- that --

17 THE COURT: I think you're going pretty
18 far. I think you have one way open here to do
19 this. And that's to put this witness on the stand.
20 I don't see any other way that I can see it just
21 offhand.

22 MR. ROSENFELD: To put the --

23 THE COURT: Put the defendant on the stand.
24 Unless you can find Yip or Chin Kin Man. If you
25 wanted to do this, you should have asked Yip whether

1 this was --

2 MR. ROSENFELD: That was not admitted into
3 evidence at the time by the Government.

4 THE COURT: But you had him under cross
5 examination.

6 MR. CLAYMAN: A copy of that was given to the
7 defendant back in September.

8 MR. ROSENFELD: I am not arguing -- we have
9 a copy of the letter. That is the letter written
10 by Lam's wife. You didn't give me a translation.

11 THE COURT: That doesn't help you very much
12 either.

13 MR. ROSENFELD: It is a question between
14 who the conspiracy was.

15 THE COURT: His wife was never in the country.

16 MR. ROSENFELD: That doesn't make any
17 difference.

18 THE COURT: Whether his wife wrote the
19 letter and whether he talked to him and/or the
20 wife, I don't think it is going to make any
21 difference in the outcome of this case. If his
22 wife had done all of the talking in these
23 conversations on the telephone, or if -- if his
24 wife was doing this unbeknown to him, you would
25 have a point. But I don't see that you have it

1 based on what you are doing here. I think you are
2 really -- I mean I tried to be as lenient -- I leaned
3 over as much as I could in your client's favor. I
4 did it as much as possible in this case, given
5 the circumstances in which he is operating. But I
6 think you are asking for too much.

7
8 Now, you can mark the standards -- I mean
9 the self-serving standards, if you want, into
10 evidence, and have this -- put this -- your expert
11 testimony in as an offer of proof if you want and
12 take it on appeal if necessary. I mean on that
13 question. But I don't think it's going to -- I mean
14 based on what I know, I don't think it will help you
15 much. You can mark it for identification and have
16 her say she would testify that that --

17 MR. CLAYMAN: I believe this witness provided
18 a report. And the Government would stipulate that
19 if she were called to testify, she would give
20 testimony.

21 THE COURT: We can mark it.

22 MR. CLAYMAN: Why don't you mark it?

23 THE COURT: We can mark it for identification.

24 MR. CLAYMAN: Okay.

25 MR. ROSENFELD: Fine, Judge. Thank you.

THE COURT: Why don't you give me the

1 standards and the questioned documents and the
2 reporter will mark them all for identification. Then
3 we will call in the jury and you can sum up.
4

5 MR. CLAYMAN: Very good. I have one piece
6 of evidence to put in.

7 MR. ROSENFELD: Before we sum up, I will
8 request at this time a short continuance because
9 part of my summation is being prepared in my office

10 THE COURT: We hate to start from the back.

11 THE COURT: Let's go ahead. There's no reason
12 why we shouldn't get the summations done this
13 afternoon. You are going to have to sum up now. You
14 might as well get somebody to call your office.

15 MR. ROSENFELD: Well, I have someone going
16 back and forth over to my office.

17 THE COURT: All right.

18 MR. CLAYMAN: Government exhibit 80 has just
19 been offered in evidence and accepted? Is that where
20 we are?

21 THE COURT: Yes. While the jury is out, let's
22 mark this for identification.

23 MR. ROSENFELD: I am trying to find it,
24 Judge.

25 THE COURT: The documents that go into the
defense case.

1
2 MR. ROSENFELD: May I just have a few minutes
3 when the Government rests? I would like to discuss
4 with the defendant the aspect of whether I am going
5 to have him on the stand or not.

6 THE COURT: All right. Let's go ahead.

7 MR. ROSENFELD: Let me just find the report.
8 I will try to find the documents, but I will submit
9 the report for identification.

10 THE COURT: All right.

11 THE CLERK: Two pages marked for identification
12 as defendant's exhibit C.

13 MR. ROSENFELD: Can we attach to the
14 exhibit -- these are the standards and the comparison
15 that she used.

16 THE COURT: The question is to the letters.

17 MISS MARTIN: These are the photographs and
18 the photocopies.

19 THE COURT: The questioned ones are the
20 letters.

21 MR. CLAYMAN: Portions of the letters.

22 MR. ROSENFELD: Anything which is actually
23 handwritten are the standards.

24 THE COURT: All right. They are in your
25 left hand now?

MISS MARTIN: They are all bunched up

1 together.

2 THE COURT: The standards and the photographs
3 are in your left hand now.

4 MR. ROSENFELD: I don't have any photos.
5 I just have two photocopies.

6 THE COURT: What are the standards?

7 MR. CLAYMAN: Which standards we used for
8 comparison? The standards or the things that she
9 compared?

10 MR. ROSENFELD: Yes. That's what I am saying.

11 MR. CLAYMAN: Would you make a pile of those?

12 MR. ROSENFELD: That's right over here.

13 There is one other --

14 MISS MARTIN: Actually two others.

15 MR. ROSENFELD: (continuing) -- which Renee
16 Martin has.

17 MR. CLAYMAN: Is it a fair statement that
18 all those statements were prepared after the
19 indictment and --

20 MR. ROSENFELD: After the indictment. I
21 don't know whether the defendant understood because
22 he speaks Chinese.

23 THE COURT: But they are prepared in the
24 preparation --

25 MR. ROSENFELD: For trial.

1 THE COURT: For this trial. Okay. By the
2 defendant.

3 MR. ROSENFELD: Correct.

4 THE COURT: Let's mark them as exhibit D for
5 identification.

6 THE CLERK: This is D.

7 (So marked.)

8 MR. ROSENFELD: There is one other standard.

9 Do you have any other standards?

10 MISS MARTIN: Yes.

11 MR. ROSENFELD: Can we have them, please?

12 THE COURT: Is that a standard or --

13 MR. ROSENFELD: I haven't looked.

14 MISS MARTIN: These are the standards that
15 he gave. These three sheets.

16 THE COURT: Mark that D-1.

17 THE CLERK: This is D-- and this is D-1; the
18 standards are D, batch of documents. D for
19 identification.

20 Three standards are D-1 for identification.

21 THE COURT: All right.

22 (So marked.)

23 THE COURT: Now we are going to take the
24 blowups.

25 MR. CLAYMAN: The blowups of the exhibits.

1 Will they be necessary for the Court to keep
2 custody of?

3 THE COURT: I'm not going to keep custody
4 of anything. We will have them just in case there
5 is an appeal if anyone wants to look at them.
6

7 MR. ROSENFELD: Do you want to mark this?

8 THE COURT: What is it?

9 MR. ROSENFELD: The comparison on the questioned
10 document.

11 THE COURT: All right.

12 The questioned documents, they will be E.
13 Wait a minute.

14 MISS MARTIN: I am sorry.

15 THE COURT: One at a time. E is the
16 questioned documents.

17 THE CLERK: E.

18 (So marked.)

19 MR. ROSENFELD: These are photocopies of
20 the questioned documents.

21 THE CLERK: Document marked for identification
22 as defendant's exhibit E.

23 THE COURT: All right.

24 Now, let's take your blowups.

25 MISS MARTIN: All right.

THE COURT: Just take them all together as a

1 group.

2 MISS MARTIN: Okay, fine. There are four
3 pages of blowups.

4 THE CLERK: Four pages. This will be F for
5 identification.

6 THE COURT: Okay. Can I get the jury in and
7 then we will send them out because you will want
8 to make motions.

9 MR. ROSENFELD: Can I put this stuff away
10 first?

11 THE COURT: All right.

12 Do you want to mark as defendant's exhibit
13 G, this letter that nobody has identified?

14 MR. ROSENFELD: Pardon me?

15 THE COURT: Do you want to mark this as
16 G?

17 MR. ROSENFELD: Yes.

18 THE COURT: The letter which no one has
19 identified.

20 MR. ROSENFELD: Yes. For what purpose? But
21 we might as well have it marked.

22 THE COURT: All right. Have it marked as
23 G.

24 THE CLERK: So marked.

25 (So marked.)